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सं. 25] नई दिल्ली, जून 18—जून 24, 2017, शनिवार/ज्येष्ठ 28—आषाढ़ 3, 1939

No. 25] NEW DELHI, JUNE 18—JUNE 24, 2017, SATURDAY/JYAISTA 28—ASADHA 3, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत एवं पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 15 जून, 2017

का.आ.1462.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 सहपठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) अनुभाग-4 लखनऊ की अधिसूचना सं. 03सीबीआई-पी-VI-2017-1 (25)बी/2017 दिनांक 24 मई, 2017 द्वारा प्राप्त सहमति से पुलिस थाना हजरतगंज, जिला लखनऊ, उत्तर प्रदेश में पंजीकृत मु.अ.सं. 0411 दिनांक 22.05.2017, धारा 302 भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) के अधीन दण्डनीय, में उद्भूत होने वाले तथ्यों या तथ्य या उनके संव्यवहार के क्रम में किए गए उक्त अपराधों के संबंध में या उससे संस्कृत अपराधों/मामलों और किन्हीं अन्य अपराधों, प्रयत्नों और घटयंत्रों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त उत्तर प्रदेश राज्य पर करती है।

[फा. सं. 228/22/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 15th June, 2017

S.O. 1462.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, Home (Police) Section-4, Lucknow vide Notification No. -03C.B.I./VI-P-4-2017-1(25)B/2017 dated 24 May, 2017, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Uttar Pradesh for further investigation of Case Crime No. 411/2017 U/s 302 of IPC registered at P.S. Hazratganj, District Lucknow.

[F. No. 228/22/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 21 जून, 2017

का.आ. 1463.—केन्द्रीय सरकार, कारखाना अधिनियम, 1948 (1948 का 63) की धारा 2 के खंड (३) के पहले परन्तुक के खंड (iii) के अधीन प्रदत्त शक्तियों के अनुसरण में कोल इंडिया लिमिटेड की समनुषंगी कंपनी सेंट्रल कोलफील्ड्स लिमिटेड (सीसीएल) जिसका रजिस्ट्रीकृत कार्यालय, दरभंगा हाऊस, रांची है, के संबंधित कारखानों या कर्मशालाओं को स्तंभ (2) में यथाविनिर्दिष्ट 'अधिष्ठिता' के रूप में और यथाविनिर्दिष्ट नियुक्त अधिकारियों को स्तंभ (3) में नीचे दी गई सारणी में दर्शाया गया है :-

सारणी

क्र.सं.	कारखाना/कर्मशाला का नाम	अधिष्ठिता के रूप में नियुक्त अधिकारी का पदनाम
(1)	(2)	(3)
1.	कथारा और सवांग धोवनशाला	महाप्रबंधक (कथारा)
2.	करगली धोवनशाला	महाप्रबंधक (बी एण्ड के)
3.	गिड्डी धोवनशाला	महाप्रबंधक (अरगडा)
4.	पिपरवार सी.एच.पी./धोवनशाला	महाप्रबंधक (पिपरवार)
5.	राजरप्पा धोवनशाला	महाप्रबंधक (राजरप्पा)
6.	केडला धोवनशाला	महाप्रबंधक (हजारीबाग)
7.	सेंट्रल मरम्मत शाप(सीआरसी)	विभागाध्यक्ष/ महाप्रबंधक (उत्खनन)
8.	क्षेत्रीय मरम्मत शाप (आरआरएस) डाकरा, तपिन और जारंगडीह पर स्थित।	विभागाध्यक्ष/ महाप्रबंधक (उत्खनन)
9.	सेंट्रल कोलफील्ड्स लिमिटेड प्रेस	विभागाध्यक्ष/ महाप्रबंधक (प्रशासन)
10.	कोक ओवन संयंत्र, गिरीडीह	महा प्रबंधक (बी एण्ड के)

2. सेंट्रल कोलफील्ड्स लिमिटेड के अध्यक्ष-सह-प्रबंध निदेशक को, जिन्हें ऊपर यथा उपदर्शित अधिष्ठिता के रूप में पदाभिहित किया गया है ऐसे अधिकारियों को अपने-अपने पदों पर नाम निर्दिष्ट करने के लिए प्राधिकृत किया जाता है।

[फा.सं. 43022/3/2017-एलए एण्ड आईआर]

आर. एस. सरोज, अवर सचिव

MINISTRY OF COAL

New Delhi, the 21st June, 2017

S.O. 1463.- In pursuance of the powers conferred by clause (iii) of the first proviso to clause (n) of section 2 of the Factories Act, 1948 (63 of 1948), the Central Government hereby appoints officers specified in column (3) of the Table below as “Occupier” of the respective factories or workshops of Central Coalfields Limited (CCL), specified in column (2) of the said Table having its registered office at Darbhanga House, Ranchi, Jharkhand a subsidiary company of the Coal India Limited, namely:-

TABLE

Sl. No.	Name of Factory/ Workshop	Designation of Officer appointed as Occupier
(1)	(2)	(3)
1.	Kathara and Sawang Washeries	General Manager (Kathara)
2.	Kargali Washery	General Manager (B and K)
3.	Giddi Washery	General Manager (Argada)
4.	Piparwar CHP/ Washery	General Manager (Piparwar)
5.	Rajrappa Washery	General Manager (Rajrappa)
6.	Kedla washery	General Manager (Hazaribagh)
7.	Central Repair Shop (CRS)	HOD/ General Manager (Excavation)
8.	Regional Repair Shop (RRS) at Dakra, Tapin and Jarangdih	HOD/ General Manager (Excavation)
9.	Central Coalfields Limited Press	HOD/ General Manager (Administration)
10.	Coke Ovens Plant, Giridih	General Manager (B and K)

2. Chairman-cum-Managing Director of the Central Coalfields Limited is hereby authorized to nominate by name such officers to the respective positions who are designated as occupiers as indicated above.

[F. No. 43022/3/2017-LA & IR]

R. S. SAROJ, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 13 जून, 2017

का.आ. 1464.—राष्ट्रपति, श्री रंजन कुमार सरन, पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, धनबाद-I को केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, धनबाद-II के पीठासीन अधिकारी के पद के कार्यकाल का अतिरिक्त प्रभार 25.05.2017 से छः महीनों तक की अवधि तक अथवा नियमित आधार पर पद के भरे जाने तक अथवा अगले अदेश तक, जो भी पहले हो तब तक, सौंपते हैं।

[सं. ए-11016/02/2015-सीएलएस-II]

एस. के. सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th June, 2017

S.O. 1464.—The President is pleased to entrust the additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Dhanbad-II to Shri Ranjan Kumar Saran, Presiding Officer,

Central Government Industrial Tribunal-cum-Labour Court, Dhanbad-I for a period of six months with effect from 25.05.2017 or till the post is filled on regular basis or until further orders, whichever is earliest.

[No. A-11016/02/2015-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 14 जून, 2017

का.आ. 1465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबंद्ह नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 16/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/39/2012-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1465.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 14.06.2017.

[No. L-22012/39/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of April, 2017

INDUSTRIAL DISPUTE No. 16/2012

Between :

The President (Sri R. Kashi Ramulu),
Telengana Trade Union Council (E/716),
H.No.3-5-247/3, Azmathpura,
Karimnagar (AP)

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Bhupalapally Area, Bhupalapally,
Warangal District

...Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/39/2012-IR(CM-II) dated 26.4.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Bhupalapalli Area in terminating the services of Sri Sriramula Ramakrishna, Ex-Coal Filler, KTK-1 Incline, Bhupalapalli Area with effect from 25.7.2005 is fair and justified? To what relief the concerned workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 16/2012 and notices were issued to the parties concerned.

2. The averments made in the claim statement in brief are as follows:

The workman was appointed as Badli Filler on 15.8.1993 and he was confirmed as coal filler in the year 2001. The workman was regular to his duties till the year 2001. But during the year 2001, the workman suffered with ill-health and other family problems. While the matters stood thus, charge sheet dated 27.5.2002 was issued to the Workman by the Respondent alleging that the Workman remained absent during the year 2001, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service vide order No. BHP/PER/20D/2100 dated 15.7.2005. It is stated that during the course of the enquiry the Workman has categorically stated that his inability to perform his duties regularly during the year 2001 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 8 years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order No. BHP/PER/20D/2100 dated 15.7.2005 issued by the Respondent is illegal and arbitrary and to set aside the same, and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondent filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 16.8.1993 as Badli Filler, and thereafter he was promoted as Coal Filler with effect from 1.3.2000. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed on behalf of the workman, not to challenge the validity of the domestic enquiry, the domestic enquiry conducted in the present case is held as legal and valid vide order dated 10.11.2016.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Sriramula Ramakrishna is legal and justified?
- II. Whether the Workman is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Workman submitted that due to ill-health and other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Workman was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 40 years, he is now aged about 45 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Workman is a first offender and has worked for more than 8 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Sriramula Ramakrishna is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Sriramula Ramakrishna is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT

In the result, the reference is answered as under:

The action of the General Manager, M/s. Singareni Collieries Company Ltd., Bhupalapalli Area in terminating the services of Sri Sriramula Ramakrishna, Ex-Coal Filler, KTK-1 Incline, Bhupalapalli Area with effect from 25.7.2005 is neither fair nor justified.

Proceeding No BHP/PER/20D/2100 dated 15.7.2005 issued by the Respondent is declared as illegal and is hereby set aside. It is ordered that the workman Sri Sriramula Ramakrishna be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters,

taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 14 जून, 2017

का.आ. 1466.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 11/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-22011/22/2009-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1466.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of M/s. FCI and their workmen, received by the Central Government on 14.06.2017.

[No. L-22011/22/2009-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 11/2009

Ref. No. L-22011/22/2009-IR(CM-II) dated 18.05.2009

BETWEEN :

The State Secretary,
Bhartiya Khadya Nigam Karamchari Sangh,
TC/3V, Vibhuti Khand,
Gomti Nagar, Lucknow

AND

1. The Area Manager,
Food Corporation of India,
7, R Dalibagh,
Lucknow (U.P.)

2. The General Manager(UP)
 Food Corporation of India,
 TC/3V, Vibhuti Khand, Gomti Nagar,
 Lucknow

AWARD

1 By order No. L-22011/22/2009-IR(CM-II) dated 18.05.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between State Secretary, Bhartiya Khadya Nigam Karamchari Sangh, Lucknow (espousing cause of Sri Shailendra Kumar Srivastava) and the General Manager(UP)/Area Manager, FCI, Lucknow for adjudication. Corrigendum dated 12.04.2010 was also issued.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT FCI IN IMPOSING PENALTY ON SRI SHAILENDRA KUMAR SRIVASTAVA VIDE ORDER DATED 21.08.2008, 26.11.2007, 07.03.2007, 04.03.2008, 06.08.2008, 06.10.2007, 20.02.2007, 27.03.2007 AND 10.09.2007 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF IS THE WORKMAN CONCERNED ENTITLED?”

3. As per the claim statement W-4 the workman has stated in brief that illegal and arbitrary charge sheet dated 26.03.2006 and 11.10.2006 have been issued by opposite party no.2 Area Manager, FCI for which detailed reply have been submitted; vague charges were framed and the submissions made by the workman were not considered, and non speaking and non reasoned penalty order dated 21.08.2008 imposed penalty of recovery of Rs.5000/- which was arbitrarily passed. The Regulation enumerated as 54(1) to 54(iv) have been quoted in the claim statement. The workman has asserted that the regulations have not been followed by the management. Seven charge sheets and consequent penalty orders have been mentioned in the claim statement. With the aforesaid pleadings request has been made to set aside the penalty orders dated 21.08.2008, 26.11.2007, 07.03.2007, 04.03.2008, 06.08.2008, 06.10.2007, 27.03.2007, 20.02.2007 and 10.09.2007. Several documents have been filed as per list W-6 by the workman.

4. The management while denying the allegations leveled in the claim statement have filed written statement M-7 wherein it has been pleaded that the charge sheets referred here-in above were issued after following the due procedure, reply submitted by the workman was properly considered and genuine order was passed by the disciplinary/competent authority. Staff Regulations were duly followed and principle of natural justice was also taken care of. The management has requested that the workman is not entitled to any relief.

5. While denying the grounds taken in the written statement, rejoinder W-8 has been filed by the workman reiterating the facts mentioned in the claim statement. The management has filed documents as per list M--11.

6. The workman has filed affidavit W-9 in evidence. He was duly cross examined on behalf of the management.

7. The management has filed affidavit M-16 of Mr. Chanchal Kumar Trivedi, AGM (Vig) in its evidence. Another list of documents W-17 has been filed by the workman. The management witness was cross examined on behalf of the workman.

8. Later on list of documents W-26 was filed by the workman.

9. Arguments of both the parties have been heard at length. Record has been scanned thoroughly.

10. During the pendency of the case the workman moved an application W-28 dated 13.4.2017 alongwith affidavit requesting therein that all the penalty amount imposed by the management has been deposited and he has sought promotion to the manager cadre and the workman is no more interested to contest the case. The workman and his learned AR have requested to permit for withdrawal of the case. The management also did not oppose the application.

11. Since the workman himself has stated on oath in the affidavit dated 13.4.17 that the penalty sum has been deposited by him and he sought promotion in his service, and he is no more interested to further contest the case. Therefore, in such circumstances legality of the penalty order mentioned in the reference need not be adjudicated. The workman is not entitled to any relief.

12. Award as above.

LUCKNOW
 28.04. 2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1467.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 23/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-22011/58/2014-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1467.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of M/s. FCI and their workmen, received by the Central Government on 14.06.2017.

[No. L-22011/58/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 18th April, 2017

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 23/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Food Corporation of India and their workman)

BETWEEN :

The Secretary	:	1 st Party/Petitioner Union
Chennai Port & Dock Workers Congress		
No. 87 (45), Royapettah High Road		
Chennai-600014		

AND

The General Manager	:	2 nd Party/Respondent
Food Corporation of India		
Regional Office		
8, Sathyamurthy Salai		
Chennai-600031		

Appearance :

For the 1 st Party/Petitioner	:	Sri K.M. Ramesh, Advocate
For the 2 nd Party/Management	:	Sri M. Imthias, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-22011/58/2014-IR (CM.II) dated 19.02.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Food Corporation of India, Chennai regarding non-implementation of 11 agreed demands is justifiable or not? If not, to what relief the members of the Union are entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 23/2015 and issued notice to both sides. Both parties have entered appearance through their counsel and filed Claim and Counter Statements respectively.

3. The averments in the Claim Statement filed by the petitioner are as below:

The petitioner represents the workmen employed in the FCI as Departmental Workers. The petitioner is having substantial number of workmen employed in the FCI Port Wing. On 06.02.1997 the FCI had issued Circular No. 3 introducing a scheme called “*Employees Benevolent-cum-Welfare Fund Scheme*”. The scheme was intended to provide limited relief in cases of death while in service or serious ailments forcing employees to retire from service. The scheme was extendable to all departmental workers or other category of workers as found necessary. The members have to contribute Rs. 10/- every month and the Corporation was to contribute a sum equal to the annual contribution received from the members. Though the scheme was introduced in other parts of the country it was not extended to the workers working in Port Wing of the Respondent Management. The Petitioner Union has submitted a charter of demands including implementation of the benevolent-cum-Welfare Fund Scheme by letter dated 14.02.2007. In the discussion held subsequently, the Management had agreed for some of the demands including implementation of the scheme. However, steps were not taken to implement the scheme. The Petitioner Union again called for agitation on the matter and a letter was given to the Management to this effect. In the discussion held subsequently, the Management agreed to put up the file regarding implementation of the scheme within a week for taking action in consultation with the Finance Department. However, the Management had not followed the matter or had taken any steps for implementing the scheme. The dispute is raised accordingly. An Award may be passed directing the Respondent to implement Employees Benevolent-cum-Welfare Fund Scheme with retrospective effect from the year 2000.

4. The Respondent has filed Counter Statement contending as below:

Employees Benevolent-cum Welfare Fund Scheme introduced by the FCI by Circular No. 3 of 1997 is intended for the regular employees governed under the FCI Staff Regulations alone. However, the Corporation has the discretion to extend the benefits of the scheme to the Departmental Workers or any other category of workers. The FCI has extended the benefit of the scheme to Departmental / DPS Workers. But this was not extended to the Port Workers on whose behalf the dispute is raised since they are governed by the Standing Orders for Workmen employed at Madras Harbours of FCI and their wages and service conditions are on par with Port and Dock Workers Labour employed at Chennai harbours. The demand for implementation of the scheme by the Petitioner Union was forwarded to the Headquarters of the Corporation but they have not taken any decision on that. It is a policy decision to be taken by the Headquarters of the FCI. So the workers cannot raise the matter as an Industrial Dispute. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W23 and Ex.M1 to Ext.M5.

6. The points for consideration are:

- (i) Whether the demand of the Petitioner Union for implementation of the Employees Benevolent-cum-Welfare Fund Scheme is justifiable?
- (ii) What, if any is the relief to which the Union is entitled?

The Points

7. The subject matter of the reference by the Government is non-implementation of 11 demands raised by the Petitioner Union. The Secretary of the Union examined as WW1 has stated in the Proof Affidavit filed by him that the Management has already conceded for all the other demands except the one regarding implementation of the Employees Benevolent-cum-Welfare Fund Scheme. So the only issue that now remains for consideration is whether the scheme is to be implemented among the workmen working in FCI Port Wing.

8. The petitioner has claimed that as per the circular of 1997 the concerned scheme is to be implemented to the Departmental Workers and other workers also. On the other hand, the stand of the Respondent is that only the regular employees covered by the FCI (Staff) Regulations are entitled to the benefit of the scheme as a matter of right and it is only at the discretion of the Corporation the benefit of the scheme can be extended to the Departmental Workers or any other category of workmen. Thus according to the Respondent it requires a policy decision on the part of the Management to extend the benefit of the scheme to the workmen in question. The dispute itself is not maintainable on account of this, it is contended by the Respondent.

9. The Secretary of the Chennai Port and Dock Workers Congress who has raised the dispute has given evidence in tune with the contentions raised in the Claim Statement. An Officer of FCI has given evidence as MW1, denying the claim of the Petitioner Union.

10. The case of the Petitioner Union is that the Corporation has already taken the decision to extend the benefit of the scheme to Departmental Workers as well but those workmen employed in the Port Wing alone were excluded from the benefit of the scheme. It is claimed by the Respondent the particular section of workmen being those working in the Port are governed by the Standing Orders for Workmen employed at Madras Harbour of FCI and they are having a

separate Welfare Scheme known as Labour Welfare Fund and for this reason also they are not entitled to the benefit of the scheme as claimed by the petitioner.

11. It is by Ext.W6 circular that the scheme in question was introduced by the FCI in 1997. This scheme in fact replaced the earlier scheme and provided for more benefits to the employees. As per the circular the scheme was available to all those who had membership in the scheme and membership were made compulsory for all the employees covered by the FCI (Staff) Regulations 1971. The applicability clause of the scheme states that it shall be extended to all the regular employees covered under the FCI (Staff) Regulations. However, there is an addenda that the Corporation may in its discretion extend the benefit of the scheme to the departmental workers or any other category as it may deem fit. As per the scheme the members of the scheme are to contribute at the rate of Rs. 10/- per month for a benevolent fund to be constituted. The scheme provided for payment of amount to the family in case of death of a member and also provided for refundable advances in certain contingencies.

12. Ext.W9 is the circular dated 03.01.2006 by which the benefits of the scheme was extended to the Departmental and DPS Workers on the same terms and conditions as applicable to the employees of the Corporation covered by Staff Regulations. This Circular by the Corporate Office is seen communicated to all the Regional Centres. What is to be deciphered from Ext.W9 is that the benefit of the scheme was extended to all the departmental and DPS workers also.

13. In spite of Ext.W9 the workmen in FCI Port Wing on whose behalf the dispute is raised are not getting benefit of the scheme. The Petitioner Union has been agitating for some time demanding that the benefit should be extended to them also. It could be seen that on several occasions discussions were held with the Management consequent to notice of agitation on the part of the petitioner. Ext.W12 is the communication enclosing a Minutes of the Meeting held on 22.02.2007 in the matter of discussion regarding implementation of the scheme to the workers in question along with other demands. As seen from this, during discussion, the Area Manager has stated that there is no provision for benevolent fund for departmental labourers of FCI for Chennai Port. It is not known why the workers of Chennai Port alone were excluded while other departmental labourers were given the benefit. Ext.W9 in fact does not make any distinction between those working in the Ports and other departmental labourers. It has come out in the discussion on 22.02.2007 that the workmen of Visakhapatnam were extended with the benefit. It could be seen from the subsequent minutes prepared on discussion regarding the matter that the Management was postponing the issue on one or other pretext. Ext.W14 is a communication enclosing copy of the Minutes of the Meeting held on 14.05.2007. What is stated in this is that it was assured during the discussion by the concerned Section of Chennai that it will put up the file within a week for taking necessary action in consultation with the finance. Ext.W15 another minutes of the meeting held on 29.08.2007 states that with the concurrence of the Regional Finance Wing the issue would be sorted out soon. As seen from Ext.W16 another minutes of the meeting held on 13.12.2007 the General Manager of Tamil Nadu had directed the Area Manager to recover the benevolent fund amount from the salary of the labourers retrospectively from the year 2000 so that equal amount could be contributed by the FCI for the entitlement of the benefits of the scheme by the concerned employees. In spite of all the above discussion held between the Management and the Unions the demand of the workmen for implementing the benefit of the scheme to them had not materialized. It could be seen from the discussion held that there was never a stand for the Respondent that the concerned workmen are not entitled to the benefit. On the other hand there was always consent for the implementation but it was being postponed on one or other reason. When the scheme was implemented for all other departmental workers there was no necessity to exclude the men working at the Port alone from the benefit of the scheme.

14. The case of the Respondent that being a policy decision to be taken by the Management the dispute could not be raised by the Petitioner Union has no basis. As per Ext.W9 a decision has already been taken to extend the benefit to departmental workmen. Even DPS workers are seen given the benefit. In that case it was discriminatory on the part of the Respondent in not extending the benefit of the scheme to Dock Workers alone.

15. MW1 has stated in her affidavit that the Port and Dock Workers of FCI are governed by a separate Standing Orders meant for the workmen employed in Madras Harbour and the scheme could not be extended to them. The reason given is that there is already a welfare scheme for these workmen under the Standing Orders. However, it could be seen from the admission of MW1 during cross-examination that the scheme is virtually non-existent now. She has admitted during cross-examination that after 2007 amount is not coming to the Welfare Fund intended for the benefit of the Port and Dock Workmen. According to her, in spite of this the workmen are getting benefits from the already available accumulated fund. However, she admitted that once the fund exhausts they will not be getting anything from the fund. Thus the existing fund, if any, in respect of the workmen is on the verge of a standstill. There is no necessity to deny the benefit of the scheme to the concerned workmen on this basis. However, they shall not be entitled to the benefit of both schemes. Even during discussion, the suggestion has been for replacement of the existing fund with the scheme in question. As could be seen from the minutes the Union also was suggesting that the welfare fund could be replaced by the scheme. Since the scheme is providing more benefit there is no justification for not-extending this to the workmen in question. The Respondent can replace the existing fund with the scheme applicable to all other employees.

16. Respondent has produced Ext.M5 to Ext.M10 giving the particulars regarding the disposal of request made by labourers for financial help from the Labour Welfare Fund in different years. As could be seen from Ext.M10, even in 2014 requests are seen disposed. Thus it could be seen that so far the workmen were enjoying the benefits of the fund. So there is no reason for implementing the scheme with retrospective effect as claimed by the petitioner. It would be sufficient if it is implemented from the date of the award.

On the basis of the above discussion, an Award is passed as below:

The Respondent is directed to replace the Labour Welfare Fund now in existence with Employees Benevolent-cum-Welfare Fund Scheme and implement it among the workmen employees attached to the erstwhile Port Wing of the Respondent with effect from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th April, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri M. Vasudevan

For the 2nd Party/Management : MW1, Sri A. Nagalakshmi

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	List of members of the Petitioner Union
Ext.W2	-	Labour strength all over India in the Respondent for the quarter ending 30 th June, 2014
Ext.W3	-	The Dock Workers (Regulation of Employment) Act, 1948
Ext.W4	-	Standing Orders for Workmen employed at Madras Harbour by the Respondent Management
Ext.W5	-	Government of India Gazette containing Chennai Port Trust Employees' (Conduct) Regulations, 1987
Ext.W6	06.02.1987	Circular No. 3 of 1997 issued by the Headquarters of Respondent Management
Ext.W7	30.05.2001	Letter from Senior Regional Manager, FCI, TN, Chennai to the District Manager, FCI, Chennai
Ext.W8	07.06.2001	Notice issued by the District Manager, FCI, TN, Chennai
Ext.W9	03.01.2006	Circular No. 01/2006 issued by the General Manager (IR-L), FCI
Ext.W10	14.02.2007	Letter from petitioner to the Executive Director, FCI, Zonal Office, Chennai
Ext.W11	23.02.2007	Letter from petitioner to the General Manager, Regional office, FCI, Chennai
Ext.W12	05.03.2007	Letter from General Manager (IR), FCI, Chennai to the Area Manager.
Ext.W13	26.03.2007	Letter from petitioner to the Executive Director, FCI, Zonal Office, Chennai
Ext.W14	17.05.2007	Letter from General Manager (IR), FCI, Chennai to the Area Manager
Ext.W15	29.08.2007	Minutes of the Meeting held with INTUC by the Respondent
Ext.W16	13.12.2007	Minutes of the Meeting held with Transport & Dock Workers Union by the Respondent Management
Ext.W17	17.12.2008	Memorandum of Settlement arrived at under Section-12(3) of the ID Act, 1947 between the Management of FCI with Unions
Ext.W18	17.12.2008	Minutes of the proceedings held before the Dy. Chief Labour Commissioner
Ext.W19	04.03.2008	Memorandum of Settlement arrived at under Section-12(3) of the ID Act between the Management of FCI and Transport & Dock Workers Union

Ext.W20	13.04.2009	Letter from petitioner to the General Manager, FCI, Chn.
Ext.W21	02.08.2010	Letter from Area Manager, FCI, Chennai to the General Manager (IR), FCI, Chennai
Ext.W22	01.01.2012	Settlement on Wage Revision & Allied matters of Port & Dock Workers at the Major Port Trusts & DLB
Ext.W23	13.05.2014	Circular No. 10/2014 issued by General Manager (IR-L), FCI

On the Management's side

Ex.No.	Date	Description
Ext.M1	25.11.2002	Letter from Food Corporation of India, Headquarters, New Delhi to Zonal Manager, FCI (South), Chennai
Ext.M2	04.03.2008	Memorandum of Settlement arrived at under Section-123(3) of the ID Act between the Management of FCI and Transport & Dock Workers Union
Ext.M3	05.04.2008	A letter return by the Petitioner Union to the Deputy Chief Commissioner of Labour (Central), Shastri Bhawan, Chennai
Ext.M4	06.04.2009	A letter return by the Petitioner Union to the Deputy Chief Commissioner of Labour (C), Shastri Bhawan, Chennai
Ext.M5	-	Particulars above disposal of request made by the labours of financial help from Labour Welfare Fund in the year 2009
Ext.M6	-	Particulars above disposal of request made by the Labours for financial help from Labour Welfare Fund in the year 2010
Ext.M7	-	Particulars above disposal of request made by the Labours for financial help from Labour Welfare Fund in the year 2011
Ext.M8	-	Particulars above disposal of request made by the Labours for financial help from Labour Welfare Fund in the year 2012
Ext.M9	-	Particulars above disposal of request made by the Labours for financial help from Labour Welfare Fund in the year 2012
Ext.M10	-	Particulars above disposal of request made by the Labours for financial help from Labour Welfare Fund in the year 2012

नई दिल्ली, 14 जून, 2017

का.आ. 1468.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण-सह-श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1119/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/93/1999-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1119/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. FCI and their workmen, received by the Central Government on 14.06.2017.

[No. L-22012/93/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 25th April, 2017

Reference: (CGITA) No. 1119/2004

The Joint Manager (PO),
Food Corporation of India,
Opp. Sector 5, Ganesh Nagar Cap Storage,
Gandhidham (Kutch) – 370201

...First Party

V/s

Shri Sewak Daya Ram,
D.B.Z. – N – 55,
Gandhidham,
Kutch (Gujarat) – 370201

...Second Party

For the First Party : Shri Sanatkumar Bhatt

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-22012/93/99-IR(CM-II) dated 30.07.1999 referred the dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Joint Manager (PO), FCI, Gandhidham in terminating/discontinuing the services of Shri Sewak Daya Ram, Khalasiw.e.f. 27.12.1997 is just, valid and legal? If not, to what benefits the workman is entitled and what other directions are necessary in the matter?”

1. The reference dates back to 30.07.1999. The second party submitted the statement of claim Ex. 2 on 11.10.1999 along with number of documents and the first party submitted the written statement Ex. 5 on 07.01.2002 along with number of documents vide list Ex. 6.

2. The second party workman submitted his affidavit Ex. 12 in support of his statement of claim on 05.09.2011 but the first party did not appear to cross-examine, therefore, the cross-examination of the second party was closed on 04.10.2016.

3. The second party workman in his statement of claim Ex. 2 has alleged that he was appointed in the Food Corporation of India, Vacuator Division as Khalasi on 07.04.1965 and was dismissed from service by the first party Food Corporation of India hereinafter referred to as FCI vide order no. V/FCI/KDL/1/79 dated 12.02.1980 dismissing him with retrospective effect from 27.12.1977. The workman filed his Civil Suit No. 165 of 1981 in the court of Civil Judge Junior Division, Gandhigram against the order of dismissal which was passed by FCI for unauthorised absence of workman from duty for a very long time since 1997 for which he was dismissed in the year 1980 with retrospective effect. It is further alleged that after resuming duty on 26.12.1977, he fell sick and remained under medical treatment for a long time of Doctor M.G. Buch, Rambagh Government Hospital. But despite submitting the applications for leave along with medical certificate, his leave were not regularised on the ground of departmental inquiry. Same was also misplaced in the FCI. Thus non-regularisation or rejection of leave leading into dismissal is flagrant violation of law and provisions of Section 25 of the Industrial Disputes Act as no retrenchment compensation was pay to him. He has submitted the copy of the dismissal order, judgement passed in Civil Suit No. 165/1981, written statement of FCI submitted in aforesaid suit, judgements passed in appeal and as well as in Special Civil Application No. 3169/1986 passed by the High Court and as well as by the Supreme Court. Thus the workman mainly has challenged the dismissal order on the ground that his leave application was supported with medical certificate and same were rejected with any

basis, therefore, he has prayed setting aside of the impugned dismissal order with reinstatement of the service and back wages with all fringe service benefits.

4. The first party vide his written statement Ex. 5 admitted that he has been in service of FCI since 07.04.1965 and he was terminated on 12.02.1980 making his termination effective from 27.12.1977 which was challenged by the workman in the court of Civil Judge Junior Division which was set aside by the Civil Judge Junior Division but in appeal by the District judge, the order of the Civil Judge Junior was set aside and the dismissal order was confirmed. The High Court and Supreme Court did not interfere into the judgement of the Civil Judge. The FCI has justified his action on the ground that the workman has been absent from duty for a very long time involving in anti-national like smuggling and lacking sincerity and devotion to duty. It is further alleged by the FCI that the workman never applied for a leave; therefore, no question arises of granting or sanctioning of leave. It is wrong to say that the action of the FCI was violative of the provisions of the Section 25 F and Section 2 (OO) of the Industrial Disputes Act, because before passing the termination order, he was giving opportunity to defend himself in the inquiry but he did not avail the same. Thus, the prayer sought by the workman in his statement of claim is not maintainable and liable to be rejected.

5. The workman in support of his statement of claim submitted his affidavit Ex. 12 and the first party did not prefer to cross-examine.

6. I heard the arguments of the parties present in the tribunal and have gone through the oral as well as documentary evidence. The second party workman has filed the copies of the judgement of the Civil Judge Junior as well as the District Judge which reveals that the District Judge in the appeal set aside the order of the Civil Judge Junior Division and dismissed the aforesaid Civil Suit denying the relief sought therein. It is also noteworthy that the High Court as well as the Supreme Court did not interfere into the order of the District Judge passed in the appeal. Thus the order of the District Judge has the effect of res-judicata.

7. The argument of the workman that he wrongly chosen the jurisdiction of the Civil Court as the matter relates to the I.D. Act, therefore, he is entitled for the relief sought and the judgement passed in the appeal by the District Judge has no legal binding in the matter. The argument is baseless because he himself chosen the jurisdiction of the Civil Court, therefore, the reference is barred by the principle of estoppel.

8. Thus the reference has no force. Therefore, the reference is disposed of with the observation as under: "the action of the Joint Manager (PO), FCI, Gandhidham in terminating/discontinuing the services of Shri Sewak Daya Ram, Khalasi w.e.f. 27.12.1997 is just, valid and legal."

9. In the light of the aforesaid observations, the reliefs sought by the workman are also rejected.

10. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1469.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 24/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/6/2012-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 14.06.2017.

[No. L-22012/6/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of April, 2017

INDUSTRIAL DISPUTE No. 24/2012

Between :

The President (Sri Raiz Ahmed),
Singareni Miners & Engg. Workers Union (HMS),
C-34, Sector-I, Godavarikhani,
Karimnagar District (A.P.)-505209

...Petitioner Union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Bhupalapally Area, Bhupalapally,
Warangal District

...Respondent

Appearances :

For the Petitioner Union : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/6/2012-IR(CM-II) dated 19.4.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Bhupalapalli Area in terminating the services of Sri Madikanti Narasimha Rao, Ex-Coal Filler, KTK-1 Incline, Bhupalapalli Area with effect from 19.8.2006 is fair and justified? To what relief the concerned workman is entitled?”

The reference is numbered in this Tribunal as I.D. No. 24/2012 and notices were issued to the parties concerned.

2. The averments made in the claim statement in brief are as follows:

The workman was appointed as Badli Filler in the year 1992 under compassionate appointment and he was posted to work at Health Department, Kothagudem and later he was confirmed as coal filler in the year 2000 and posted to work at Bhupalapally. The workman was regular to his duties till the year 2003. But during the year 2003 the workman suffered jaundice and bed ridden for prolonged time, due to which, his wife and relatives took him to his native place for ayurvedic treatment. While the matters stood thus, charge sheet dated 15.7.2004 was issued to the Workman by the Respondent alleging that the workman remained absent during the year 2003, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the workman was dismissed from service vide order No. BHP/PER/20-D/3226 dated 13/19-8-2006. It is stated that during the course of the enquiry the workman has categorically stated that his inability to perform his duties regularly during the year 2003 was only on account of his ill-health and other family problems. But without considering any of his submissions, the workman was dismissed from service. It is also stated that the action of the Respondent management in dismissing the workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The workman has rendered 11 years of continuous service in the Respondent management. The workman approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the workman was constrained to approach this Tribunal to declare the impugned order No. BHP/PER/20-D/3226 dated 13/19-8-2006 issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the workman into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondent filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the workman was appointed in the Respondent's company on 11.6.1992 as Badli Filler, and later he was drafted as Cartman in Cat. I, and subsequently as Coal Filler with effect from 4.3.2000. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The workman has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the workman from service. It is stated that in fact the workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed on behalf of the workman, not to challenge the validity of the domestic enquiry, the domestic enquiry conducted in the present case is held as legal and valid vide order dated 14.8.2014.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Madikanti Narasimha Rao is legal and justified?
- II. Whether the Workman is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the workman submitted that due to ill-health and other family problems, the workman could not be able to attend his duty sincerely. Even in his show cause the workman has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the workman has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the workman, and has given capital punishment to the workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent submitted that when the workman was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the workman could not be able to be regular in his duty, the workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed. After dismissal of service, the workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 38 years, he is now aged about 43 years and is searching ways and means to provide bread and butter to his family members. When the workman being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The workman is a first offender and has worked for more than 11 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Madikanti Narasimha Rao is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Madikanti Narasimha Rao is not legal and justified. After dismissal of service as stated earlier, when the workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the workman has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the workman is not entitled to get all the relief as claimed in his claim statement. But he is only entitled to be given a chance to work in the Respondent management.

Thus, Point Nos. II & III are answered accordingly.

RESULT

In the result, the reference is answered as under:

The action of the General Manager, M/s. Singareni Collieries Company Ltd., Bhupalapalli Area in terminating the services of Sri Madikanti Narasimha Rao, Ex-Coal Filler, KTK-1 Incline, Bhupalapalli Area with effect from 19.8.2006 is neither fair nor justified.

Proceeding No BHP/PER/20-D/3226 dated 13/19.8.2006 issued by Respondent is declared as illegal and is hereby set aside. It is ordered that the workman Sri Madikanti Narasimha Rao be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 14 जून, 2017

का.आ. 1470.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर के पंचाट (संदर्भ सं. 1/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/28/1995-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th June, 2017

S.O. 1470.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/1997) of the Central Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 14.06.2017.

[No. L-12011/28/1995-IR (B-II)]

RAVI KUMAR, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

पीठासीन अधिकारी : गिरीश कुमार शर्मा, आर.एच.जे.एस.

केस नं.सी.आई.टी. 01 / 97

सी.आई.एस. नं. 46 / 2014

रैफरेन्स : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश संख्या—

एल—12011 / 28 / 95—आई.आर.(बी.2) दि. 31.12.1996

बैंक ऑफ बडौदा स्टाफ यूनियन राजस्थान, जयपुर

...प्रार्थी

बनाम

आंचलिक प्रबन्धक, बैंक ऑफ बडौदा, संसार चन्द्र रोड,

आनन्द भवन, जयपुर

...अप्रार्थी

उपरिथित :

प्रार्थी की ओर से : विद्वान प्रतिनिधि श्री जयन्तीलाल शाह ।

अप्रार्थी की ओर से : विद्वान प्रतिनिधि श्री रुपिन काला ।

दिनांक 27.04.2017

अधिनिर्णय

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को दिनांक 04.01.1997 को प्राप्त हुआ है कि—

“Whether the action of the management of Bank of Baroda, Jaipur is justified in not paying special allowance Rs.410/-per month as per industrywise settlement dated 29-10-93 to the ALPM/Computer Operator who are employed in the Bank, as per 7.1 and 7.2 of bipartite settlement dated 6.9.89? just and legal? If not,to what relief the workman is entitled and from which date?”

प्रकरण दर्ज रजिस्टर किया जाकर उभय पक्षकारान को नोटिस जारी किए गए। प्रार्थी की ओर से दिनांक 02.06.1997 को स्टेटमेन्ट ऑफ क्लेम पेश कर अभिकथन किया गया कि बैंक ऑफ बडौदा स्टाफ यूनियन राजस्थान जयपुर एक रजिस्टर्ड यूनियन है बैंक ऑफ बडौदा की राजस्थान में कार्यरत शाखाओं में कार्य करने वाले अधिकांश कर्मचारी उनकी यूनियन के सदस्य हैं। कम्प्यूटर ऑपरेटर्स के पद पर कार्य करने वाले कर्मचारी भी उनकी यूनियन के सदस्य हैं। कम्प्यूटर कार्य प्रणाली से उत्पन्न समस्याओं के बारे में सेवा शर्तों व कार्यभार के बारे में विवाद लगातार उठते रहे, जिनका निराकरण उद्योग आधारित द्विपक्षीय समझौते के द्वारा किया गया। कम्प्यूटर पर कार्यरत कर्मचारी कम्प्यूटर ऑपरेटर का कार्यभार बहुत बढ़ गया उस आधार पर प्रथम बार अखिल भारतीय स्तर पर उद्योग आधारित द्विपक्षीय समझौता दिनांक 29.3.1987 सम्पन्न हुआ, जिसके अनुसार सभी बैंकों में कार्य करने वाले कम्प्यूटर आपरेटर को 350/-—रुपये प्रतिमाह स्पेशल भत्ता दिनांक 01.9.1986 से दिया गया, जो बैंक ऑफ बडौदा में कार्यरत कम्प्यूटर आपरेटर को भी दिया गया। इसके बाद बैंक आधारित समझौता बैंक ऑफ बडौदा व ऑल इण्डिया बैंक ऑफ बडौदा एम्प्लाईज फैडरेशन के मध्य दिनांक 6.9.1989 को सम्पन्न हुआ। इस समझौते के प्रावधान 7(1)में यह प्रावधान किया गया है कि स्पेशल भत्ते के संबंध में उद्योग आधारित समझौते व उनमें समय समय पर होने वाले संशोधन बैंक ऑफ बडौदा पर लागू होंगे। इसी प्रकार 7(2) में यह प्रावधान किया गया है कि स्पेशल भत्ते के संबंध में उद्योग आधारित समझौते व उसमें समय समय पर किये गये संशोधन व इण्डियन बैंक ऐसोसियेशन द्वारा की गयी सिफारिशों के अनुसार ए.एल.पी.एम./ए.ई.ए.एम./एन.कोडर/डाटा एन्ट्री आपरेटर को यह भत्ते उनके द्वारा कार्य करने की तिथि से दिये जायें, इसमें प्रशिक्षण की अवधि भी शामिल है। बैंक आधारित समझौते में दिनांक 6.9.89में कम्प्यूटर आपरेटर का स्पेशल भत्ता नहीं बढ़ाया था, इसी कारण कर्मचारियों के हितों को ध्यान में रखते हुए इस समझौते में

प्रावधान 7(1) व 7(2) के किए गए ताकि उद्योग आधारित समझौते में कम्प्यूटर आपरेटर का स्पेशल भत्ता भविष्य में समझौते या सहमति से बढ़ता है तो उसका विपरीत प्रभाव बैंक ऑफ बडौदा के कम्प्यूटर आपरेटर व अन्य कर्मचारियों पर न पड़े व उन्हें भी उसका लाभ मिल जाय। औद्योगिक शांति की दृष्टि से भी समझौता दिनांक 6.9.89 के प्रावधान 7(1) व 7(2) उचित थे, अन्यथा बैंक कर्मचारी उस समझौते को स्वीकार ही नहीं करते। उसके बाद दिनांक 29.10.1993 को उद्योग आधारित समझौता सम्पन्न हुआ, जिसमें प्रावधान 16(बी) में कम्प्यूटर ऑपरेटर का स्पेशल भत्ता 350 रुपये से बढ़ाकर 410 रुपये प्रतिमाह किया गया है। यह समझौता दिनांक 01.11.1993 से लागू किया गया है व सभी बैंक इस समझौते के अनुसार कम्प्यूटर आपरेटर को 410 रुपये प्रतिमाह स्पेशल भत्ता 01.11.1993 से दे रहे हैं, लेकिन बैंक ऑफ बडौदा के कर्मचारियों को यह लाभ नहीं दिया गया, उन्हें अब भी 350 रुपये प्रतिमाह ही स्पेशल भत्ता दिया जा रहा है। अतः बैंक ऑफ बडौदा के कम्प्यूटर आपरेटर के पद पर कार्य करने वाले कर्मचारी बैंक आधारित समझौता दिनांक 6.9.1989 के प्रावधान 7(1) व 7(2) के आधार पर 410 रुपये स्पेशल भत्ता प्राप्त करने के अधिकारी होने का अभिकथन करते हुए वर्णित किया कि बैंक ऑफ बडौदा में कार्य करने वाले कम्प्यूटर आपरेटर्स ने बैंक के अधिकारियों को पत्र लिखकर दिनांक 01.4.93 से स्पेशल भत्ता 410 रुपये प्रतिमाह देने की मांग की थी लेकिन बैंक ने उस पर कोई ध्यान नहीं दिया। इस प्रकार बैंक अपने कम्प्यूटर ऑपरेटर को उसके साथ भेदभाव कर 410 रुपये प्रतिमाह स्पेशल भत्ता न देकर समझौता दिनांक 6.9.89 का उल्लंघन कर रहा है। अतः बैंक में कार्यरत कम्प्यूटर आपरेटर/ए.एल.पी.एम. को दिनांक 1.11.1993 से स्पेशल भत्ता 410 रुपये प्रतिमाह दिलाया जावे तथा इसके ऐरियर का भुगतान दिलाया जावे और ऐरियर की राशि पर 18 प्रतिशत की दर से ब्याज दिलाये जाने की मांग की है।

विपक्षी बैंक द्वारा स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत कर अभिकथन किया गया है कि बैंक आफ बडौदा की शाखाओं व कार्यालयों में कम्प्यूटर अवश्य लगाये गये हैं एवं ऐसे लोगों की नियुक्तियां भी की गयी हैं, लेकिन कम्प्यूटर लगाने से कर्मचारियों का कार्यभार नहीं बढ़ा है तथा कम्प्यूटर कार्य प्रणाली से उत्पन्न समस्याओं के बारे में द्विपक्षीय समझौते भी हुए हैं, लेकिन दिनांक 29.3.1987 को द्विपक्षीय समझौता इण्डियन बैंक ऐसोसियेशन के लेवल पर सम्पन्न हुआ था, उसके क्लाज-22 के तहत कम्प्यूटराईजेशन व मैकेनाईजेशन के संबंध में जो प्रावधान था उसके अनुसार individual Banks को समझौते की अवधि के अन्दर भी नया समझौता /अण्डर स्टेपिंग/ /एग्रीमेंट उनकी मान्यता प्राप्त यूनियन से करने को अधिकृत किया गया था और बैंक ऑफ बडौदा की ओर से इस संदर्भ में समय पर बैंक व यूनियन के मध्य समझौते सम्पन्न भी हुए हैं। जहां तक अखिल भारतीय स्तर पर हुए समझौते दिनांक 29.3.87 का प्रश्न है दिनांक 9.6.89 को बैंक ऑफ बडौदा व आल इण्डिया बैंक आफ बडौदा एम्पलाईज फैडरेशन के मध्य एक समझौता सम्पन्न हुआ था, जिसके तहत 350 रुपये प्रतिमाह विशेष भत्ता ई.एल.पी.एम. आपरेटर को देय माना गया था। दिनांक 9.6.89 को सम्पन्न समझौते के तहत 350 रुपये स्पेशल भत्ता विपक्षी के यहां कार्यरत कम्प्यूटर आपरेटर को दिया जाने लगा था। जहां तक समझौते के क्लाज-7.1 व 7.2 का प्रश्न है, दिनांक 9.6.89 को हुए समझौते पर फैडरेशन के पदाधिकारियों ने अपने पूर्ण विवेक व खुली और खुली अंखों से हस्ताक्षर किए हैं। आई.बी.ए. लेवल पर दिनांक 29.3.1987 को हुए समझौते के क्लाज-22 के अन्तर्गत दिनांक 31.10.1992 को बैंक आफ बडौदा और आल इण्डिया बैंक ऑफ बडौदा एम्पलाईज फैडरेशन के मध्य एक समझौता ओर सम्पन्न हुआ था, जिसके अनुसार 350 रुपये प्रतिमाह विशेष भत्ता देय था। उक्त समझौता पांच साल के लिए बाध्य माना गया था और आगे जब तक दूसरा नया सेटलमेंट नहीं हो जाता, तब तक लागूमाना गया था। दिनांक 29.10.1993 को उद्योग आधारित समझौते के प्रिएम्बल के क्लाज-1 व -2 यह पूर्णतया स्पष्ट करते हैं कि दिनांक 29.10.93 के उद्योग आधारित समझौते किसी भी प्रकार से बैंक लेवल के एग्रीमेंट /सेटलमेंट/अण्डर स्टेपिंग्स जो कि कम्प्यूटर और मैकेनिज के संबंध में बैंक व यूनियन के मध्य सम्पन्न हुए हों, को प्रभावी नहीं करेगा। अतः यूनियन का यह कहना गलत है कि दिनांक 29.10.93 के समझौते के अनुसार 410 रुपये प्रतिमाह स्पेशल भत्ता दिनांक 1.11.93 से बैंक आफ बडौदा के कर्मचारियों को दिया जाना चाहिए। इसके विपरीत जैसा कि उपर उल्लेख किया गया है, बैंक लेवल समझौते के अनुसार यह भत्ता 350 रुपये प्रतिमाह ही बैंक के कर्मचारियों को देय बनता है। समझौता दिनांक 31.10.1992 के अनुसार देय राशि का भुगतान किया जा रहा है। यह समझौता पांच साल की अवधि के लिए मान्य है। अतः दिनांक 1.4.1993 से 410 रुपये प्रतिमाह की मांग जो यूनियन द्वारा की गयी है, वह गैर वाजिब, बगैर किसी अधिकारिता के है। विपक्षी की ओर से जवाब में आगे अभिकथन किया गया है कि दिनांक 6.9.89 का समझौता अभी लागू नहीं है क्योंकि इसके पश्चात बैंक लेवल पर बैंक व यूनियन के मध्य एक समझौता दिनांक 31.10.1992 को सम्पन्न हो चुका था और उसके तहत ही कम्प्यूटर आपरेटर को 350 रुपये प्रतिमाह स्पेशल भत्ता दिया जा रहा है। अपने जवाब के विशेष कथन में अभिकथन किया है कि बैंक आफ बडौदा बैंकिंग रेगुलेशन एक्ट के तहत केन्द्र सरकार का एक सार्वजनिक उपक्रम है और आई.बी.ए.का सदस्य भी है। आल इण्डिया बैंक ऐसोसियेशन द्वारा समय पर उद्योग आधारित समझौते कार्यरत कर्मचारियों के लिए सम्पन्न किए जाते हैं। यह समझौते आई.बी.ए.के जो भी सदस्य बैंकों में कार्यरत कर्मचारी है उन पर लागू होते हैं। ऐसे समझौते द्विपक्षीय समझौते कहे जाते हैं। ऐसा ही एक उद्योग आधारित समझौता दिनांक 29.3.1987 को बैंकों में कम्प्यूटराईजेशन /मैकेनाईजेशन करने के संबंध में किया गया था। विपक्षी बैंक आफ बडौदा ने दिनांक 29.3.87 को सम्पन्न हुए उद्योग आधारित समझौते के मध्य नजर रखते हुए कम्प्यूटर /मैकेनाईजेशन के विस्तार को देखते हुए एक अलग से विस्तृत समझौता बैंक की मान्यता प्राप्त यूनियन से दिनांक 31.10.1992 को किया था तदुपरांत वर्ष 1993 में दिनांक 29.10.1993 को एक अन्य द्विपक्षीय समझौता इण्डस्ट्री लेवल पर सम्पन्न हुआ था। दिनांक 31.10.1992 के समझौते को पीस मिल से लागू रखते हुए वर्ष 1993 का उद्योग आधारित समझौता लागू नहीं किया जा सकता। चूंकि विपक्षी बैंक दिनांक 31.10.1992 को मान्यता प्राप्त यूनियन से बैंक लेवल पर समझौता सम्पन्न किया गया था, वह ज्यों का त्यों आज भी लागू है और उसके अन्तर्गत सभी लाभ कर्मचारियों को प्राप्त हो रहे हैं, ऐसी परिस्थितियों में उद्योग आधारित जो समझौता वर्ष 1993 में जो सम्पन्न हुआ है, वह लागू नहीं किया जा सकता है। अतः विवाद में नो डिस्पुट अवार्ड पारित किया जाने व प्रार्थी की ओर से प्रस्तुत क्लेम को खारिज किये जाने की प्रार्थना की है।

प्रार्थी की ओर से प्रार्थी साक्षी ओम प्रकाश शर्मा न्यायाधिकरण के समक्ष परीक्षित करवाया है तथा दस्तावेजी साक्ष्य में प्रदर्श डब्ल्यू.1 से डब्ल्यू.2 को प्रदर्शकित करवाया है, जबकि विपक्षी की ओर से विपक्षी साक्षी सं.1 के सी.हंस को साक्ष्य में परीक्षित करवाया है तथा दस्तावेजी साक्ष्य में प्रदर्श एम.1 से प्रदर्श एम.5 को प्रदर्शकित करवाया है।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस सुनी एवं पत्रावली का परिशीलन किया ।

अब न्यायाधिकरण के समक्ष अवधारणीय बिन्दु यह है कि क्या विपक्षी बैंक के द्वारा उद्योग आधारित समझौता दिनांक 29.10.1993 के अनुसार ए.एल.पी.एम. कम्प्यूटर आपरेटर जो कि विपक्षी बैंक आफ बडौदा में नियोजित हैं उनको समझौते के अनुसार 410 रुपये प्रतिमाह विशेष भत्ता दिया जाना न्यायसंगत है ?

इस संबंध में सर्वप्रथम प्रार्थी साक्षी ओम प्रकाश शर्मा की साक्ष्य का परिशीलन करें तो इस गवाह ने अपनी मुख्य परीक्षा तो स्टेटमेंट आफ क्लेम में वर्णित अभिकथनों के आधार पर शपथपत्र पर दी है तथा दस्तावेजी साक्ष्य में प्रदर्श डब्ल्यू.1 दिनांक 6.9.1989 का समझौता व प्रदर्श डब्ल्यू.2 दिनांक 29.10.1993 का उद्योग आधारित समझौता प्रदर्शकिंत करवाया है। जिरह में इस गवाह ने यह स्वीकार किया है कि द्विपक्षीय समझौते उद्योग लेवल पर सम्पन्न होते हैं तथा इण्डीजुवल बैंक लेवल पर भी होते हैं। तथा आगे इस गवाह ने यह स्वीकारा है कि आल इण्डिया बैंक आफ बडौदा एम्प्लाईज फैडरेशन यूनियन आफ बैंक आफ बडौदा मान्यताप्राप्त है। जिरह में इस गवाह ने यह भी स्वीकारा है कि एक द्विपक्षीय समझौता आई.बी.ए. लेवल पर दिनांक 29.3.1987 को हुआ था, जो वर्कमैन यूनियन के मध्य इण्डस्ट्री लेवल पर सम्पन्न हुआ था तथा इस गवाह ने यह स्वीकारा है कि इस समझौते के क्लाज-22 में यह स्पष्ट उल्लेख था कि individual Bank इस समझौते की अवधि में वर्तमान में किये हुये समझौते को लागू रखें, तथा वे मान्यताप्राप्त यूनियन से फ्रेश समझौता भी कर सकते हैं लेकिन इस समझौते के हिन्दी अनुवाद में कुछ त्रुटि है, अग्रेजी का क्लाज. 22 देखा जावे इस गवाह ने आगे यह स्वीकार किया है कि दिनांक 31.10.1992 को बैंक आफ बडौदा मैनेजमेंट तथा बैंक आफ बडौदा इम्प्लाईज फैडरेशन के मध्य एक समझौता हुआ था। इस गवाह ने आगे यह भी स्वीकार किया है कि दिनांक 31.10.1992 के द्विपक्षीय समझौते की अवधि में ही इण्डस्ट्रीवाईज सेटलमेंट दिनांक 29.10.1993 को सम्पन्न हुआ था। जिसके पैरा -1 व -2 के संबंध में इस समझौते के सारे क्लाज को देखने के बाद ही अंतिम निष्कर्ष पर पहुंचा जा सकता है तथा दिनांक 06.9.1989 के इस समझौते में पैरा-11 के पैरा 7.1 / 7.2 में कम्प्यूटर के स्पेशल भत्ते के बारे में स्पष्ट स्थिति है तथा आगे इस गवाह ने जिरह में यह स्वीकार किया है कि बैंक आफ बडौदा के कर्मचारी दिनांक 29.10.1987 के समझौते के अनुसार 01.9.1986 से विशेष भत्ता 350 रुपये प्राप्त कर रहे हैं तथा इस गवाह ने इस सुझाव से इन्कार किया है कि बैंक आफ बडौदा का अतिरिक्त कार्यभार अन्य बैंक कर्मचारियों से अधिक न हो ।

विपक्षी साक्षी के.सी.हंस ने अपनी मुख्य परीक्षा तो जवाब में वर्णित अभिकथनों के आधार पर शपथपत्र पर दी है तथा दस्तावेज प्रदर्श एम.1 से प्रदर्श एम.5के बारे में अभिसाक्ष्य दी है तथा इस गवाह ने अपनी साक्ष्य में बताया है कि दिनांक 31.10.1992 का समझौता पांच वर्ष के लिए प्रभावी था तथा समझौते के तहत 350 रुपये प्रतिमाह विशेष भत्ता बैंक कर्मचारी प्राप्त कर रहे हैं। यूनियन द्वारा जो 410 रुपये प्रतिमाह स्पेशल भत्ते की मांग का जो क्लेम पेश किया गया है वह बिना किसी आधार के है तथा विपक्षी बैंक व बैंक की मान्यताप्राप्त यूनियन आल इण्डिया बैंक आफ बडौदा एम्प्लाईज फैडरेशन के मध्य तत्पश्चात एक समझौता प्रदर्श एम.5 सेटलमेंट आन कम्प्यूटराईजेशन दिनांक 17.01.2000 को सम्पन्न हुआ जिसके तहत दिनांक 01.07.1998 से स्पेशल अलाउन्स को 410 रुपये प्रतिमाह कर दिया गया है तथा जिरह में इस गवाह ने स्वीकार किया है कि आई.बी.ए. द्वारा किए गए समझौते बैंक आफ बडौदा पर भी लागू होते हैं तथा आगे इस गवाह ने बताया है कि 350 रुपये स्पेशल भत्ता आई.बी.ए.के समझौते के तहत 350 रुपये के स्थान पर 410 रुपये कर दिया गया जो दिनांक 01.10.1993 से दिया गया। रुपये 410 प्रतिमाह का स्पेशल अलाउन्स कम्प्यूटर आपरेटर पर लागू था न कि ए.एल.पी.एम. आपरेटर पर तथा बैंक आफ बडौदा ने जुलाई-1998 से यह भत्ता दिया है।

प्रार्थी के विद्वान प्रतिनिधि श्री जयन्तीलाल शाह ने बहस की कि उद्योग आधारित समझौता दिनांक 6.9.89 को हुआ था, जिसके क्लाज 7.1 / 7.2 में कम्प्यूटर आपरेटर का विशेष भत्ता इण्डस्ट्रीवाईज सेलटलमेन्ट भविष्य में बढ़ता था, जिस पर दिनांक 29.10.1993 को प्रदर्श डब्ल्यू-2 उद्योग आधारित समझौता हुआ था, जिसके अनुसार दिनांक 01.11.1993 से 350 रुपये स्पेशल भत्ता के स्थान पर 410 रुपये स्पेशल भत्ता मिलना चाहिए था, जो विपक्षी बैंक द्वारा नहीं दिया गया।

इसके प्रतिकार में विपक्षी के विद्वान प्रतिनिधि श्री रूपीन काला ने बहस की कि उद्योग आधारित समझौता जब विपक्षी बैंक के द्वारा समझौता प्रभाव में आ जाता है तो उद्योग आधारित समझौते का विपक्षी बैंक पर कोई प्रभाव नहीं रखता है तथा दिनांक 29.3.1987 को द्विपक्षीय समझौते के क्लाज- 22 के प्रावधान के अनुसार भी मान्यता प्राप्त यूनियन और बैंक आफ बडौदा के मध्य जो समझौते सम्पन्न हुए हैं, जिसमें उद्योग आधारित समझौता प्रभाव नहीं रखेगा तथा विपक्षी के विद्वान प्रतिनिधि ने न्यायाधिकरण के समक्ष केन्द्रीय सरकार औद्योगिक न्यायाधिकरण कोलकाता के रैफरेन्स संख्या-10 / 1996 के अधिनिर्णय दिनांक 9.11.1999 की प्रति भी पेश की है और दलील प्रस्तुत की है कि न्यायाधिकरण द्वारा भी दिनांक 29.10.93 के समझौते के अनुसार 410 रुपये प्रतिमाह विशेष भत्ता कम्प्यूटर आपरेटर्स प्राप्त करने के हकदार न होना अपने अवार्ड में माना है।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस पर मनन किया व अभिलेख का परिशीलन किया ।

अभिलेख के परिशीलन से यह तो स्थापित रिथ्ति है कि उद्योग आधारित समझौते में कम्प्यूटर आपरेटर का स्पेशल भत्ता भविष्य में समझौता या सहमति से बढ़ने का प्रदर्श डब्ल्यू.1 के क्लाज-7.1 में प्रावधान किया हुआ है तथा यह समझौता बैंक आफ बडौदा और आल इण्डिया बैंक आफ बडौदा एम्प्लाईज यूनियन के मध्य नहीं हुआ हो, ऐसी कोई विपक्षी की साक्ष्य नहीं है तथा दिनांक 29.10.1993 को प्रदर्श डब्ल्यू.2 समझौता बैंक प्रबन्धन व भारतीय बैंक संघ के मध्य हुआ है, जिसमें कम्प्यूटर आपरेटर को विशेष भत्ता दिनांक 01.11.1993 से 410 रुपये प्रतिमाह देय होने का अभिवर्णन है।

अब जहां तक विपक्षी के विद्वान् प्रतिनिधि का यह तर्क है कि द्विपक्षीय समझौता दिनांक 29.3.1987 जो हुआ है, उसके अनुसार individual बैंक इस समझौता प्रदर्श डब्ल्यू2 से बाध्य नहीं हैं, इस तर्क के सम्बन्ध में दिनांक 29.3.1987 के द्विपक्षीय समझौते के क्लाऊज-22 का यहां सर्वप्रथम उल्लेख करना सगत है, जो प्रदर्श एम.1 के क्लाऊज-22 के अनुसार निम्न प्रकार है:-

The Question of further extension of mechanisation/ computerisation in the industry will be reviewed by the parties after an expiry of a period of 3 years from the 8th sept.1986 and a fresh agreement entered in to with in a period of 6 months thereafter. However, it will be open to the individual banks,even during the currency of this settlement, to continue with any existing understanding/ settlement or to enter into any fresh understanding/agreement/settlement with their representative/ recognised Union at variance with what is agreed to under this Settlement for further enlargement of the scope of computerisation and mechanisation.

इस उपबंध में कोई स्पेशल अलाउन्स के बारे में व्यवस्था नहीं की हुई है बल्कि individual Banks को कम्प्यूटराईजेशन और मैकेनाइजेशन के परिक्षेत्र के लिए जो समझौते होते हैं उसके लिए खुला छोड़ा है तथा अब दिनांक 9.6.1989 का जो समझौता प्रदर्श एम.2 हुआ है, उसके तहत कम्प्यूटर आपरेटर को 350 रुपये प्रतिमाह अलाउन्स बैंक द्वारा दिया जाना शुरू कर दिया गया था तथा विपक्षी साक्षी ने जो दिनांक 31.10.1992 को बैंक आधारित समझौते के बारे में परिसाक्ष्य दी है। इस समझौता प्रदर्श एम.3 का परिशीलन करने से इसमें 350 रुपये प्रतिमाह कम्प्यूटर आपरेटर को विशेष भत्ता दिए जाने के सम्बन्ध में कोई उपबंध नहीं है बल्कि कम्प्यूटराईजेशन के संबंध में यह सेटलमेंट है तथा जो सबसे महत्वपूर्ण बिन्दु है वह यह देखना है कि जो कम्प्यूटर आपरेटर है उस पर उद्योग आधारित सेटलमेंट से विपक्षी बैंक बाध्य है या नहीं। इस सम्बन्ध में प्रार्थी की ओर से प्रदर्श उल्ल्यू.1 व डब्ल्यू.2 दस्तावेज प्रस्तुत किये गये हैं और जो अभिलेख पर साक्ष्य आयी है, उसके विवेचन में न्यायाधिकरण का विनम्र मत यह है कि प्रार्थी की साक्ष्य से ही यह आया है कि दिनांक 01.09.1986 से कम्प्यूटर ऑपरेटर को विपक्षी बैंक ने विशेष भत्ता देना शुरू कर दिया था तथा उसके पश्चात जब उद्योग आधारित समझौता दिनांक 19.10.1993 को लागू हुआ जिसमें कम्प्यूटर ऑपरेटर को दिनांक 01.11.1993 से 350 रुपये प्रतिमाह के बजाय 410 रुपये विशेष भत्ता बताया गया है, जो आई.बी.ए.के साथ भी ऐसा समझौता है तथा विपक्षी बैंक आई.बी.ए.का सदस्य है तथा सेटलमेंट दिनांक 06.09.1986 प्रदर्श डब्ल्यू.1 के क्लाज-7(1)व -7 (2) के अनुसार उद्योग आधारित द्विपक्षीय समझौता जब जब होगा तो बैंक पर भी वह लागू होगा, जिसमें बैंक ऑफ बडौदा के मध्य यह प्रदर्श डब्ल्यू.1 समझौता हुआ है, तो फिर जब प्रदर्श डब्ल्यू.2 दिनांक 29.10.1993 को उद्योग आधारित समझौता हो गया था, जिसमें 410 रुपये विशेष भत्ता कम्प्यूटर ऑपरेटर के दिनांक 01.11.1993 से किये गये हैं, जबकि बैंक ने प्रदर्श एम.5 से दिनांक 1.7.1998 से 410 रुपये प्रतिमाह कम्प्यूटर आपरेटर का विशेष भत्ता किया गया है, जबकि प्रदर्श डब्ल्यू.1 सेटलमेंट व प्रदर्श डब्ल्यू.2 सेटलमेंट के अनुसार कम्प्यूटर आपरेटर को यह विशेष भत्ता दिनांक 01.11.1993 से दिया जाना चाहिए था तथा विपक्षी के द्वितीय प्रतिनिधि ने जो कलकत्ता केन्द्रीय सरकार औद्योगिक न्यायाधिकरण रेफरेन्स सं.10/1996 अधिनिर्णय दिनांक 9.11.1999 की ओर न्यायाधिकरण का ध्यान आकृष्ट किया है। इसी अधिनिर्णय का परिशीलन करें तो इस अधिनिर्णय के पृष्ठ सं. 4 के प्रथम पैरा में ही यह बात आई है कि प्रबन्धन ने दिनांक 29.10.1993 के द्विपक्षीय उद्योग आधारित समझौते के अनुसार कम्प्यूटर ऑपरेटर को 410 रुपये प्रतिमाह राशि अदा करने के लिए दायी है, लेकिन अधिनिर्णय में यह माना है कि जो रेफरेन्स किया गया है वह ए एल पी एम के आपरेटर के बारे में है और ए एल पी एम के करीब 36 कर्मचारियों को लेकर मामला अन्तर्गत उस अधिनिर्णय के मामले में होने से तथा ए एल पी एम आपरेटर के लिए विशेष भत्ता 410 रुपये प्रतिमाह दिये जाने के बारे में उनका वलेम चलने योग्य नहीं माना बल्कि कम्प्यूटर आपरेटर के बारे में यह बताया कि ए एल पी एम के आपरेटर को कम्प्यूटर आपरेटर पर अपग्रेड किया जाता है, जबकि हस्तगत मामले में कम्प्यूटर आपरेटर या एल एल पी एम के संबंध में कोई उभय पक्ष की साक्ष्य नहीं है तथा कम्प्यूटर आपरेटर के समकक्ष ही एल पी एम आपरेटर को माना है, इसलिए हस्तगत मामले में यह प्रश्न अन्तर्वलित नहीं होने से विपक्षी इस अधिनिर्णय से कोई मदद नहीं पाता है बल्कि उपरोक्त विवेचन के फलस्वरूप विपक्षी बैंक ऑफ बडौदा द्वारा बैंक में नियोजित ए एल पी एम कम्प्यूटर आपरेटर के लिए द्विपक्षीय समझौता दिनांक 6.9.1989 के क्लाज-7(1) व (2) के अनुसार उद्योग आधारित समझौता दिनांक 29.10.1993 से 410 रुपये प्रतिमाह विशेष भत्ते का नहीं दिया जाना न्यायसंगत प्रतीत नहीं होता है तथा विपक्षी बैंक के कम्प्यूटर आपरेटर दिनांक 01.11.1993 से 350 रुपये प्रतिमाह विशेष भत्ते के बजाय 410 रुपये प्रतिमाह किया है, इसलिए दिनांक 01.11.1993 से दिनांक 30.6.1998 तक की अन्तरराशि परिलाभ विपक्षी बैंक में नियोजित कम्प्यूटर आपरेटर प्राप्त करने के हकदार हैं।

अधिनिर्णय

अतः बैंक ऑफ बड़ौदा के प्रबन्धन का कृत्य दिनांक 6.9.1989 को द्विपक्षीय समझौते के कलाज-7(1) व -7(2) के अनुसार बैंक में नियोजित ए एल पी एम /कम्प्यूटर आपरेटर को दिनांक 29.10.1993 के उद्योग आधारित समझौते से 410 रुपये प्रतिमाह विशेष भत्ता नहीं दिया जाना न्यायसंगत नहीं है तथा विपक्षी बैंक में नियोजित कम्प्यूटर आपरेटर दिनांक 01.11.1993 से 350 रुपये प्रतिमाह विशेष भत्ता के बनिस्पत 410 रुपये प्रतिमाह विशेष भत्ता पाने के कदार हैं तथा चूंकि विपक्षी बैंक ने यह भत्ता 350 रुपये के बजाय 410 रुपये दिनांक 01.07.1998 से प्रदर्श एम.5 से दिया जाना आया है, इसलिए दिनांक 01.11.1993 से 30.6.1998 तक का अन्तरराशि परिलाभ विपक्षी बैंक में नियोजित कम्प्यूटर आपरेटर पाने के हकदार हैं। विपक्षी बैंक उपरोक्त देय राशि अधिनिर्णय की तिथि से 6 माह में संदाय करे अन्यथा उस पर 6 प्रतिशत वार्षिक ब्याज पाने के हकदार होंगे। मामले के तथ्य व परिस्थिति में खर्चों पक्षकारान अपना अपना स्वयं बहन करेंगे।

नई दिल्ली, 14 जून, 2017

का.आ. 1471.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर के पंचाट (संदर्भ सं. 4/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/347/1997-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th June, 2017

S.O. 1471.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/1998) of the Central Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 14.06.2017.

[No. L-12012/347/1997-IR (B-II)]

RAVI KUMAR, Desk Officer

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज मुकदमा संख्या सी.आई.टी. 4 / 1998 हेमराज बनाम यूको बैंक रेफरेंस सं- L-12012/347/97/IR(B-II) Dated 21.04.98	नम्बर व तारीख बहकाम जो इस हुक्म की तामील में जारी हुए।
15.02.2017	प्रार्थी की ओर से कोई उपस्थित नहीं है। विपक्षी की ओर से कोई उपस्थित नहीं है। प्रार्थी के विद्वान प्रतिनिधि श्री सीताराम शर्मा ने जाहिर किया कि प्रार्थी की ओर से काफी अर्से से उनसे कोई संपर्क नहीं कर रहा है। अतः पत्रावली का अवलोकन किया। रेफरेंस के बिन्दु पर प्रार्थी की ओर से कोई साक्ष्य पेश नहीं की गई है। ऐसी सूरत में रेफरेंस में विवाद का प्रश्न कि क्या विपक्षी प्रबंधन द्वारा हेमराज का सेवापर्यवसान उचित है या नहीं? यह बिन्दु प्रार्थी की ओर से साबित न होने के कारण अनुचित प्रश्नगत आदेश को ठहराए जाने के लिए अभिलेख पर कोई बुनियादी शहादत नहीं है तथा स्टेटमेंट ऑफ क्लेम का जवाब में खण्डन है जो अभिवचन मात्र है। इसलिए इस रेफरेंस में अन्तर्ग्रस्त प्रश्न का उत्तर इस प्रकार दिया जाना संगत है कि प्रार्थी ने कोई शहादत पेश न करने से कोई विवाद की विद्यमानता हो, ऐसा प्रतीत नहीं होता है। अतः रेफरेंस में कोई विवाद विद्यमान न होने के बिना पर खारिज किया जाता है। तदनुसार केन्द्र सरकार को अवार्ड प्रकाशन हेतु भेजा जावे। आदेश आज दिनांक 15.02.2017 को सरे इजलास सुनाया गया।	(गिरीश कुमार शर्मा) न्यायाधीश केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर पत्रावली फैसल सुमार होकर बाद तकमील दाखिल दफ्तर हो। न्यायाधीश केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

नई दिल्ली, 14 जून, 2017

का.आ. 1472.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर के पंचाट (संदर्भ सं. 49/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/220/1995-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th June, 2017

S.O. 1472.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/1996) of the Central Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 14.06.2017.

[No. L-12012/220/1995-IR (B-II)]

RAVI KUMAR, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

पीठासीन अधिकारी : गिरीश कुमार शर्मा, आर.एच.जे.एस.

केस नं. सी.आई.टी. 49 / 96

सी.आई.एस. नं. 22 / 14

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक
एल-12012/220/95- आईआर.(आईआर.-2) दिनांक 11.10.96

राजू पुत्र श्री मंगतू राम, मार्फत श्री ऋषभ चन्द जैन, 80, बजरंग विहार,
गोपालपुरा मोड़, रेलवे फाटक के पास, जयपुर।

...प्रार्थी श्रमिक

बनाम

- (1) रीजनल मैनेजर, पंजाब नेशनल बैंक, 30, कृष्णा नगर, भरतपुर (राजस्थान)।
- (2) प्रबन्धक, पंजाब नेशनल बैंक, कुम्हेर, जिला भरतपुर (राजस्थान)
- (3) अंचल प्रबन्धक (जोनल मैनेजर), 1, गोपीनाथ मार्ग, एम.एल.ए. क्वार्टस के पास,
एम.आई. रोड, जयपुर (राजस्थान)।

...विपक्षी

उपरिथित :

प्रार्थी की ओर से : श्री आर.सी. जैन,

अप्रार्थी की ओर से : श्री सुरेन्द्र सिंह

दिनांक 21.04.2017.

अधिनिर्णय

रेफरेन्सः— केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक
एल-12012/220/95- आईआर.(आईआर.-2) दिनांक 11.10.96
से निम्न अनुसूची का विवाद

"Whether the action of the punjab National Bank, Bharatpur is justified in terminating the services of Shri Raju w.e.f. 14.4.90 is valid and justified? If not, to what relief, the workman is entitled? "

अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

प्रार्थी राजू पुत्र श्री मंगतूराम की ओर से स्टेटमैट ऑफ क्लेम पेश हुआ जिसके अनुसार संक्षेप में तथ्य इस प्रकार हैं कि विपक्षी संख्या-2 द्वारा उसको जनवरी, 1984 में सब स्टाफ के कार्य के लिए नियोजित किया गया था तथा उसे 15/- -रुपये रोज वेतन दिया जाता था तथा माह अप्रैल, 1989 से प्रार्थी का वेतन बढ़ाकर 20/- -रुपये रोज कर दिया गया तथा नियुक्ति से लेकर सेवामुक्ति तक प्रार्थी का कार्य संतोषजनक रहा था फिर भी प्रार्थी को दिनांक 14.04.1990 से अवैध रूप से सेवामुक्त कर दिया गया तथा विपक्षी द्वारा प्रार्थी को पानी वाले के रूप में 60/- -रुपये अलग से भुगतान किये जाते थे तथा 60/- -रुपये उसे वर्ष 1984 का बोनस भी दिया गया तथा उसके पश्चात् माह जनवरी 1984 से दिनांक 30.04.1990 तक जानबूझकर बोनस नहीं दिया गया तथा सबस्टाफ के कर्मचारी अधिकांशतः अवकाश पर रहते थे तथा पंजाब नेशनल बैंक के शाखा प्रबन्धक को एक वर्ष में प्रबन्धक अधिकार शक्ति के तहत 1500/- -रुपये खर्च करने का अधिकार दे रखा था, परन्तु प्रार्थी को वेतन प्रबन्धक शक्ति के तहत भुगतान किया गया इसलिए वह राशि कई हजार रुपये हो गई, जिसके सम्बन्ध में अंकेक्षण विभाग ने आपत्ति उठाई, जिस पर शाखा प्रबन्धक ने दिनांक 9.2.1990 को पत्र लिखा, जिसमें यह अंकित किया गया कि उनकी शाखा में अधीनस्थ कर्मचारी (सब स्टाफ) निरन्तर अवकाश पर रहते हैं और बैंक कार्य को सुचारू रूप से चलाने के लिए सब स्टाफ के कार्य की ऐवज में मजदूरी दिखाकर भुगतान किया गया, इसलिए सीमा से अधिक राशि प्रबन्धक शक्ति में बढ़ी है तथा दिनांक 14.01.1991 को यूनियन ने बैंक से एक समझौता किया, जिसमें अस्थाई कर्मचारी जो बैंक द्वारा सब स्टाफ के रूप में लगाये गये हैं और उनकी 240 दिवस की सेवाएँ समझौते के दिन तक पूर्ण हो चुकी हैं, उन्हें बैंक सेवा में लिया जावेगा तथा प्रार्थी की सेवाएँ 240 दिवस से अधिक होने के बावजूद भी उसे स्थाई सब स्टाफ की सेवा में नहीं लिया गया, जिस पर प्रार्थी ने वरिष्ठ प्रबन्धक को भी पत्र भेजा, परन्तु कोई कार्यवाही नहीं हुई तथा दिनांक 2.5.1989 से 13.04.1990 तक प्रार्थी को सब स्टाफ के रूप में वेतन राशि 5,320/- -रुपये राशि दी गई है, जो 20/- -रुपये रोज के हिसाब से थी, जिसके अनुसार प्रार्थी की 266 दिन की कार्यावधि सेवा समाप्ति से पूर्व 12 माह में पूर्ण हो जाती हैं। प्रार्थी सुबह प्रबन्धक के यहां से चाबी लेकर बैंक की स्वीपर से सफाई कराना, प्रार्थी द्वारा काउन्टर साफ करना, बैंक के लेजर्स काउन्टर पर रखना तथा दिन में बैंक टाईम में लेजर व रजिस्टर, पेपर वगैरहा एक सीट से दूसरी सीट पर पहुंचाना, लिफाफे तैयार करना तथा उन्हें पोस्टऑफिस में डालकर आना, पोस्ट ऑफिस से डाक लाना तथा बैंक का कार्य पूर्ण होने पर लेजर टेबिलों से अपने स्थान पर रखना एवं बैंक के ताले लगाकर चाबी बैंक प्रबन्धक को देना आदि कार्य प्रार्थी से विपक्षीण द्वारा लिया जाता था तथा कोई वरिष्ठता सूची भी नहीं बनाई गई। अन्त में प्रार्थी ने यह प्रार्थना की है कि विपक्षी नियोजक द्वारा प्रार्थी की दिनांक 14.4.1990 से की गई सेवामुक्ति अनुचित एवं अवैध है तथा प्रार्थी को युन: सेवा में लिए जाने, उसकी सेवाएँ निरन्तर माने जाने तथा सेवाएँ निरन्तर माने जाने के कारण मिलने वाले समस्त अर्थिक एंव स्थाई नियुक्ति सहित अन्य लाभ प्राप्त करने का प्रार्थी अधिकारी है।

जिसका विपक्षी की ओर से जवाब प्रस्तुत कर अभिकथन किया गया है कि प्रार्थी राजू एवं विपक्षी बैंक का या उसके किसी कार्यालय या शाखा का सम्बन्ध कामगार व नियोजक का नहीं रहा है। प्रार्थी राजू ने कभी भी बैंक सेवा में कामगार के रूप में सेवाएँ नहीं दी। जब किसी दिन आकस्मिक कार्य घंटे दो घंटे के लिए होता था उसको एक मुश्त राशि से करवाने के लिए लगा लिया हो तो वह उसी समय का कान्ट्रेक्ट रहता है और कान्ट्रेक्ट वहीं समाप्त हो जाता है। प्रार्थी स्वयं का निजी धन्दा करता आ रहा है और उसने अपनी स्वयं की कैन्टीन बैंक परिसर में केन्टीन ठेकेदार के रूप में चाय नमकीन की सप्लाई के लिए ले रखी है तथा प्रार्थी अपने स्वयं के जेनरेटर से बैंक को बिजली भी सप्लाई करता था और उसका चार्ज लिया करता था। विपक्षी की ओर से अपने जवाब में अभिकथन किया गया है कि बैंक में नियुक्ति के लिए स्टेच्यूटरी प्रावधान हैं तथा प्रार्थी से सन्-1985 में 33 दिन, वर्ष-1986 में 93 दिन, वर्ष-1987 में 168 दिन एवं 1988 में एक दिन आकस्मिक कार्य होने पर आकस्मिक कार्य जॉब वर्क जैसे बाहर से स्टेशनरी आने पर उनको उतारकर बैंक में जमा करवाना, कूलर्स उठाने, कूलर की सफाई करने व पानी भरने आदि के लिए घंटे दो घंटे के लिए आकस्मिक रूप से कार्य लिया तथा दिसम्बर, 1984 से मई, 1985 तक 6 माह में एक-एक घंटे रोज बैंक में पानी भरने का कार्य प्रार्थी करता था और अगस्त, 1986 से प्रार्थी राजू ने अपने स्वयं की कैन्टीन बैंक परिसर में केन्टीन ठेकेदार के रूप में चाय-नमकीन की सप्लाई के लिए आरम्भ की और बैंक कर्मचारियों को उचित दर पर चाय-नमकीन प्राप्त हो इसलिए उसको बैंक से प्रति कर्मचारी के हिसाब से अनुदान दिया जाता था तथा जब बैंक में प्रार्थी को नियुक्ति ही नहीं दी तो हटाने का प्रश्न ही उत्पन्न नहीं होता है। चूंकि सेवा में प्रार्थी भर्ती नहीं हुआ इसलिए उसकी उपस्थिति नहीं होती थी तथा प्रार्थी से कभी भी सब-स्टाफ का कार्य नहीं लिया गया, केवल उसको पानी भरवाने के लिए 60 रुपये प्रतिमाह की दर से एकमुश्त राशि दी गई थी तथा जनवरी-1984 से दिनांक 13.4.1990 तक प्रार्थी ने अप्रार्थीगण के यहां कार्य नहीं किया तथा अन्त में प्रार्थी का स्टेटमेंट ऑफ क्लेम मय व्यय खारिज किये जाने की प्रार्थना की है।

प्रार्थी की ओर से न्यायाधिकरण के समक्ष प्रार्थी स्वयं राजू परीक्षित हुआ है तथा विपक्षीगण की ओर से विपक्षी साक्षी सं.1 आर.के.जैन व विपक्षी साक्षी सं.2 चन्द्र प्रकाश गोयल न्यायाधिकरण के समक्ष परीक्षित हुये हैं तथा प्रदर्श एम. 1 प्रदर्शकिंत करवाया गया है।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस सुनी व पत्रावली का अवलोकन किया।

अब न्यायाधिकरण के समक्ष अवधारणीय बिन्दु यह है कि क्या प्रार्थी विपक्षी बैंक में दैनिक वेतन भोगी के रूप में मस्टररोल पर नियुक्त था और क्या प्रार्थी ने एक कलैण्डर वर्ष में 240 दिवस या एक कलैण्डर वर्ष में निरन्तर कार्य किया है ?

इस सम्बन्ध में प्रार्थी साक्षी स्वयं की साक्ष्य का परिशीलन करें तो प्रार्थी ने अपनी मुख्य परीक्षा स्टेटमेंट ऑफ क्लेम में वर्णित अभिकथनों के आधार पर प्रस्तुत की है। प्रतिपरीक्षा में इस गवाह ने इस सुझाव से इन्कार किया है कि वह रोजाना डेढ़-दो घंटे ही बैंक की शाखा में काम करता हो तथा जिरह में इस गवाह ने यह स्वीकार किया है कि बाउचर पर जहां जहां उसके हस्ताक्षर हैं उसने भुगतान प्राप्त किया है तथा जिरह में इस गवाह ने बताया है कि राजू वर्मा लाइट हाउस के नाम से कोई दुकान नहीं है। आगे इस गवाह ने बताया है कि कैन्टीन में वर्ष 1990 के बाद काम किया था तथा 1990 से पूर्व कैन्टीन में कार्य नहीं किया था तथा माह अप्रैल, 1989 से फरवरी 1990

का जो भुगतान जवाब में पेज सं.10 पर बताया है वह कैन्टीन का नहीं है,बल्कि उसका काम करने का भुगतान है। जिरह में इस गवाह ने यह स्वीकार किया है कि उसको कोई नियुक्ति पत्र नहीं दिया गया था।

विपक्षी की ओर से विपक्षी साक्षी आर.के.जैन ने अपनी मुख्य परीक्षा तो जवाब में वर्णित अभिकथनों के आधार पर शपथपत्र से दी है तथा जिरह में इस गवाह ने बताया है कि प्रार्थी का कोई रिकार्ड नहीं रखा जाता था, उसको केवल भुगतान बाउचर से ही किया जाता था तथा प्रार्थी ने कैन्टीन में सन् 1986 से कार्य करना शुरू किया तथा आकस्मिक कार्य के लिए नियुक्ति हेतु कोई बैंक के नियम बने हुए नहीं हैं तथा जिरह में इस गवाह ने यह भी बताया है कि तीन चतुर्थ श्रेणी कर्मचारी के पद स्वीकृत थे,जिन पर मदनलाल,लायकराम व लालचन्द कार्यरत थे। जिरह में इस गवाह ने यह भी बताया है कि प्रार्थी को जो बाउचर पेश किये गये हैं उसके अलावा प्रतिमाह 60 रुपये पानी भरने के लिए भुगतान किया जाता था।

विपक्षी साक्षी सं.2 चन्द्र प्रकाश गोयल ने अपनी मुख्य परीक्षा तो शपथपत्र पर प्रस्तुत की है,जो जवाब में वर्णित अभिकथनों के आधार पर है तथा जिरह में इस गवाह ने बताया है कि प्रार्थी को अगस्त 1986 में कैन्टीन का ठेका दिया था तथा प्रार्थी ने माह अगस्त 1986 से माह अप्रैल 1990 तक कैन्टीन का कार्य ठेके पर किया है तथा किसी भी बाउचर पर कैन्टीन ब्याय के रूप में ठेके पर कार्य किये जाने का अंकन नहीं है। जिरह में इस गवाह ने यह स्वीकार किया है कि वर्ष 1986 से अप्रैल 1990 तक 60 रुपये प्रतिमाह पानी भरने के लिए भुगतान किया है तथा जिरह में इस गवाह ने यह स्वीकार किया है कि प्रार्थी को रोजाना भुगतान नहीं करते थे,जब भी काम होता था उसके हिसाब से बाउचर से भुगतान किया जाता था। जिरह में इस गवाह ने बताया है कि कैन्टीन ब्याय के रूप में भुगतान मासिक ही किया जाता है।

प्रार्थी के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी /श्रमिक राजू ने विपक्षी बैंक में माह जनवरी-1984 से दिनांक 13.4.1990 तक दैनिक वेतन भोगी के रूप में लगातार कार्य किया है तथा वर्ष 1986 से माह अप्रैल-1990 तक पानी भरने का कार्य भी किया है,जिसके लिए 60/-रुपये का भुगतान भी विपक्षी बैंक ने किया है तथा अगस्त-1986 से माह अप्रैल-1990 तक कैन्टीन का कार्य ठेके पर किया है,लेकिन किसी बाउचर पर यह अंकन नहीं किया है तथा प्रार्थी को मासिक भुगतान किया जाता था तथा प्रार्थी को बिना नोटिस वेतन व छंटनी मुआवजे के दिनांक 14.4.1990 को सेवामुक्त कर दिया, जो अवैध है तथा प्रार्थी सब स्टाफ के रूप में कार्य करता था इसलिए सब स्टाफ के रूप में बहाल किये जाने का हकदार है तथा विपक्षी ने जो जवाब प्रस्तुत किया है और जो साक्ष्य पेश की है,उससे यह कर्तव्य स्थापित नहीं है कि प्रार्थी पार्ट टाईम कार्य करता हो बल्कि एक-दो घंटे रोजाना कार्य करना स्वीकार किया है तथा बैंक में रोजाना पानी भरने के 60/-रुपये मासिक वेतन दिया जाना भी स्वीकार किया है,इसलिए यदि प्रार्थी को पार्ट टाईम कर्मकार भी माना जावे तो भी उसकी सेवामुक्ति औद्योगिक विवाद अधिनियम-1947 की धारा-25(एफ) की पालना में नहीं हो सकती तथा प्रार्थी की ओर से लिखित बहस भी प्रस्तुत की गई है। प्रार्थी के विद्वान प्रतिनिधि ने निम्न न्यायिक विनिश्चयों की ओर न्यायाधिकरण का ध्यान आकृष्ट किया है:-

- [1] S.B. Civil Writ Petition No. 9035/2005. Regional Manager, S.B.I. & Others. Vs. Government of India & Others.
- [2] D. M. New India Assurance Co. Ltd. Vs. A.SANKARALINGAM-2008[119] F.L.R. 398.
- [3] AARAM SAINI Vs. PRESIDING OFFICER CENTRAL GOVT. INDUSTRIAL TRIBUNAL & LABOUR COURT, JAIPUR -2012{135}FLR-847.
- [4] KRISHI UTPADAN MANDI SAMITI THROUGH ITS SECRETARY, ANAND NAGAR Vs. ARVIND CHEAUBEY & ANOTHER-2003[1]LL J-507[SC].
- [5] JAI BHAGWAN Vs. THE STATE HARYANA & ANOTHER-1983[47] FLR-532{SC}.
- [6] AJAYPAL SINGH Vs. HARYANA WAREHOUSING CORON.- 2015[145]FLR-425.
- [7] STATE OF RAJ.& Ors. Vs. Shri Mahendra Joshi & Another- 2003[3] RLW-1966.
- [8] KRISHAN SINGH Vs. EXECUTIVE ENGINEER, HARYANA STATE AGRICULTURAL MARKETING BOARD.
- [9] 2010[3]SCC-637.
- [10] ANOOP SHARMA Vs. PUBLIC HEALTH DIVISION PANIPAT [HARYANA] 2010 [2] RLW-1586[SC].
- [11] MANAGER MUSLIM MUSAFIRKHANA MOTI DOONGARI JAIPUR Vs. JAHUR KHAN -2016[151]-995.
- [12] DIRECTOR,FISHERIES TERMINAL DIVISION Vs. BHIKUBHAI MEGHAJI BHAI CHAVDA-2010 LAV-IC-1089[SC].
- [13] MANAGER, M/s. MITTAL STEEL manufacturing company vs. chotharam and another. 2005[3]wlc-430.

[14] MUNICIPAL CORPORATION KOTA Vs. JUDGE INDUSTRIAL TRIBUNAL & ANR.2001-WLC[UC]607.

[15] STATE OF HARYANA AND OTHERS. Vs. VIJAY KUMAR AND ANOTHER-2001[IP]LL J-1592.

[16] JASMER SINGH Vs, STATE HARYANA & ANOTHER -[2015] 4 SCC-458.

[17] GOURI SHANKER Vs. STATE OF RAJASTHAN -2016[1]SCC [L & S]-546.

इसके प्रतिकार में अप्रार्थीगण के विद्वान प्रतिनिधि ने बहस की कि जब कोई आकस्मिक कार्य होता था तो प्रार्थी से एक-दो धंटे कार्य करा लिया जाता था तथा प्रार्थी व विपक्षी के मध्य कर्मकार व नियोजक का सम्बन्ध कभी नहीं रहा है तथा प्रार्थी से जो कार्य करवाया जाता था उसका शाखा प्रबन्धक के अधिकार क्षेत्र में जो खर्चा करने की सीमा थी उससे उसका भुगतान किया जाता था तथा प्रार्थी की कोई नियमित नियुक्ति नहीं थी इसलिए प्रार्थी पुनः स्थापना का अधिकारी नहीं है विपक्षी के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान न्यायिक विनिश्चय—जे.डी.ए.जयपुर बनाम जज, लेबर कोर्ट, जयपुर व अन्य. 2015(4)डब्ल्यू.एल.सी.(राज.)331, की ओर आकृष्ट किया है।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस पर मनन किया व उभय पक्ष की ओर से प्रस्तुत उपरोक्त न्यायिक विनिश्चयों का सम्मानपूर्वक परिशीलन किया।

उभय पक्ष की साक्ष्य के विवेचन के फलस्वरूप न्यायाधिकरण का विनम्र मत यह है कि प्रार्थी दैनिक वेतन भोगी के रूप में सब स्टाफ में रखा गया हो, ऐसा कोई लिखित दस्तावेज अभिलेख पर नहीं आया है तथा प्रार्थी स्वयं ने भी अपनी साक्ष्य में भी स्वीकार किया है कि उसको कोई लिखितपत्र से नियुक्ति नहीं दी गई थी तथा प्रदर्श एम जो विपक्षी ने बाउचर्स पेश किये हैं वह लेबर चार्जेज के संबंध में हैं तथा इन बाउचर्स से प्रार्थी द्वारा विपक्षी बैंक से भुगतान उठाना स्वीकृत रिस्थिति है तथा लेबर चार्जेज के रूप में जब प्रार्थी ने इन बाउचर्स से भुगतान उठाया है तो प्रार्थी व अप्रार्थी की साक्ष्य से यह आया है कि उसे पानी भरने के 60/-रुपये बैंक द्वारा दिये जाते थे, तो इसका तात्पर्य यह है कि प्रार्थी दैनिक वेतन भोगी के रूप में बैंक में कार्य नहीं कर रहा है। अगर बैंक के द्वारा प्रतिदिन के उसको नियोजन पर रखा जाता तो उसे पानी भरने के 60/-रुपये प्रतिमाह नहीं दिये जाते। अप्रार्थी की साक्ष्य से यह सही है कि एक-दो धंटे पार्ट टाईम पर प्रार्थी ने अप्रार्थी बैंक में कार्य किया है तथा सन् 1986 से सन् 1990 तक 60 रुपये प्रतिमाह बैंक में पानी भरने के रूप में प्रार्थी को भुगतान किया गया है।

विपक्षी साक्षी चन्द्रप्रकाश गोयल जो कि उप प्रबन्धक है उसकी साक्ष्य से वर्ष 1987 में 167 दिन प्रार्थी द्वारा कार्य करना बताया गया है तथा माह अगस्त 1986 से अप्रैल 1990 तक कैन्टीन बॉय के रूप में कार्य किया है तथा प्रार्थी साक्ष्य व विपक्षी साक्ष्य से यह तो स्थापित रिस्थिति है कि प्रार्थी ने बैंक में कैन्टीन ब्याय के रूप में एक वर्ष की अवधि के लिए निरन्तर वर्ष में कार्य किया है, हालाँकि पार्ट टाईम कार्य करना व पानी भरने का अतिरिक्त मासिक भुगतान करना आया है, तो प्रार्थी दैनिक वेतन पर ना होकर पार्ट टाईम जॉब वर्क पर था, जिसकी अवधि एक वर्ष से अधिक हो गई तो फिर माननीय उच्च न्यायालय के न्यायिक विनिश्चय. 2008(119)एफ.एल.आर. 398 में प्रतिपादित सिद्धांत की रोशनी में पार्ट टाईम कर्मकार के लिए भी दफ-25एफ. की पालना करना आज्ञापक है, जो विपक्षी बैंक द्वारा नहीं किया जाना प्रकट है। केवल पार्ट टाईम कर्मकार होने के कारण एवं वह भी पूरे वर्ष दैनिक वेतन पर मस्टररोल पर ना होने से तथा कैन्टीन का कार्य संविदा पर होने से उभय पक्ष की जो साक्ष्य मौखिक व दस्तावेज प्रदर्श एम.1 को देखते हुए प्रार्थी को विपक्षी बैंक ने किसी स्वीकृत पद के विरुद्ध कार्य न करने के कारण व प्रार्थी का नियोजन किसी लिखित से न होने के कारण पुनःस्थापना मामले के तथ्य एवं परिस्थिति में उचित प्रतीत नहीं होता है, क्योंकि प्रार्थी ने जो बैंक में कार्य जिस प्रकृति का किया, वह बैंक सब स्टाफ के तीनों पद पर व्यक्ति कार्यरत होने के तथ्य को देखते हुए माननीय राजस्थान उच्च न्यायालय के न्यायिक विनिश्चय डब्ल्यू.एल.सी. 2015(4)331 में प्रतिपादित सिद्धांत की रोशनी में प्रार्थी कर्मकार को पुनः स्थापन के बजाय विपक्षी बैंक द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा-25 एफ.की पालन न करने के फलस्वरूप प्रार्थी को एक लाख रुपये प्रतिकार दिया जाना उचित प्रतीत होता है। अतः इस रेफरेंस का उत्तर निम्न प्रकार से देते हुए अधिनिर्णय पारित किया जाना समीचीन प्रतीत होता है।

अधिनिर्णय

अतः पंजाब नेशनल बैंक भरतपुर का श्री राजू को दिनांक 14.4.1990 से सेवाएँ समाप्त करना वैध एवं उचित नहीं था तथा प्रार्थी कर्मकार श्री राजू एक लाख रुपये विपक्षी बैंक द्वारा दफा-25एफ. औद्योगिक विवाद अधिनियम के आज्ञापक उपबन्ध की पालना न करने के कारण एक लाख रुपये बतौर प्रतिकार के दिलाया जाना न्यायोचित है, जो विपक्षी बैंक प्रार्थी श्री राजू को तीन माह में संदाय करे अन्यथा 6 प्रतिशत वार्षिक की दर से प्रार्थी व्याज पाने का हकदार होगा। मामले के तथ्य एवं परिस्थिति में खर्च पक्षकार अपना स्वयं वहन करें।

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 14 जून, 2017

का.आ. 1473.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कारपोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ सं. 124/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/41/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th June, 2017

S.O. 1473.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 124/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Corporation Bank and their workmen, received by the Central Government on 14.06.2017.

[No. L-12012/41/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26th MAY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C R No. 124/2007

I Party

Sh. D. Narayanswamy,
S/o. Doddai Uttanallappa,
H.No.41, Opp. Shanimahatma Temple,
Allalasandra, G.K.V.K. Post,
Bangalore – 560065

(By Sri. M Rama Rao,
Authorized Representative of I
Party)

II Party

The Chief Manager,
Corporation Bank,
Head Office,
Mangaladevi Temple Road,
Mangalore – 575001

Advocate for II Party:
M/s. Sundaraswamy & Ramdas

AWARD

1. The Central Government vide Order No.L-12012/41/2007-IR(B-II) dated 23.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEULE

**“Whether the action of the management of Corporation Bank in imposing the punishment of dismissal from services on Shri D. Narayanaswamy vide order dated 10.04.2006 is legal and justified?
If not, to what relief the workman is entitled to?”**

2. Brief details mentioned in the claim statement are as follows:-

The I Party has passed 7th Standard and the I Party has joined the II Party as part time sweeper at its Regional Office, M.G. Road, Bangalore on 01.04.1985 and his Employee No. is M 1422. The I Party served the II Party Bank sincerely, honestly and diligently. In the Yelahanka Branch there are only 2 sub staff posts, including the I Party. The II Party suddenly suspended the I Party through their order dated 29.07.2002, which has been served to him on 31.07.2002. In the suspension order, unfounded allegations have been made against the I Party that, he has attempted to commit the burglary of the branch from 4 pm on 25.05.2002 to 5 am on 26.05.2002 with another person, and ransacked the branch, etc., and arrested by the police on 24.06.2002 and has been in judicial custody from 24.06.2002 to 08.07.2002. It is pertinent to note that, the I Party has been suspended after 2 months of the alleged incident. Hence, the allegation should not have been changed in the charge sheet. But, the allegations have been changed in the charge

sheet pertaining to the same incident. It is also pertinent to note that, the Branch Manager Mr. K. C. Sheshayya joined the branch on 15.05.2002 and immediately availed joining time and reported for duty on 23.05.2002 and has taken charge of the branch from Mr. Revankar, Officer of the branch. The said Manager has applied for VRS and the same has been accepted and he has been relieved from the bank by the management, without making any allegations/charge sheet. The Officer Mr. Revankar has also not been charge sheeted in the matter and the I Party has been made as a scapegoat, for their faults, negligence, misconducts etc., Further, the Bank has not waited for the reply on the allegations and prejudged that, the I Party has committed the misconducts. Hence, everything has been pre-planned to isolate/victimize/punish the I Party, since the I Party belong to lowest cadre in the bank and also, to the lowest caste in the society. In the Criminal Case filed by the bank against the I Party, he has been honourably acquitted on 29.09.2004 by the Court of the Chief Judicial Magistrate, Bangalore in CC No. 499/02, by clearly stating that, there is no records and documents to show that, I Party has committed the offence alleged, and the witnesses are doubtful and cannot be believed, for a moment and also it is impossible even to guess that, I Party has committed the offence alleged. But the bank has not proceeded against the three officials of the bank. The bank has not furnished any cogent reasons for continuing the enquiry even after the acquittal by the Court. When the enquiry is in progress, suspension imposed on I Party has been revoked on 12.03.2005 and he has been transferred to Regional Office, Belgaum, so as to hinder him from repeatedly contacting his Advocate – defence representative and also to prepare the proper defence. The Enquiry Officer in his findings has not considered that, leaving the keys by the manager is misconduct. Further, the suspension order and the charge sheet have been issued only on the suspicion of the police, on the I Party. But, the Bank and Enquiry Officer continued the enquiry on the same set of facts placed by the Police before the Criminal Court. Hence, the report of the Enquiry Officer is perverse, not based on fact and is biased. Further, the witness submitted that, he is not having personal knowledge of Ex M-26 and Ex M-27 identified by him. If it is original key, then the specific complaint for the loss of key by the concerned has to be made. Further, all the management witnesses have stated that, it is the original key and the Enquiry Officer has also conveniently continued the same version and victimized the I Party. The alleged original key is not found before 23.05.2002. Hence, for the loss of the keys, proper disciplinary action should have been taken on the Branch Managers for negligence, but it is not done to save the skin of the officers. Further, without trying to find out which manager is at fault for the misuse of the original key of the back door, the allegation of theft of taking the keys is put on I Party, without any records and intentionally to victimize the I Party. Further, it is stated that, the door has been opened with original key and also, to save themselves from their acts, they put the blame on I Party for the opening the door. If at all, the blame for the misuse of the key is there, it should be on the officers, who are the holders of the key. Therefore, the facts show that, it is only outsiders tried to commit the burglary and not the I Party. Further, for each and every sentence, no cross examination is required. When the facts speak the truth, cross examination is not required. The contention raised by the I Party that, witnesses are identical in both the Criminal case and departmental enquiry and a different interpretation cannot be drawn from that of Criminal Court, is not considered/answered by the Enquiry Officer and hence, the Enquiry Officer report is perverse. The action of the Disciplinary Authority in accepting the Enquiry Officer report, without receiving I Party's submission is biased, and also, against the Clause 6(a) of the Settlement and also the punishment of dismissal is against the provision of BPS and hence, illegal. The management has never considered the I Party's 21 long years of unblemished service, while imposing the capital punishment. Therefore, the I Party prays that an Award may be passed in the interest of justice, equity and fair play,

- a) by declaring the dismissal of service through order dated 10.04.2006 as illegal, null and void and against the principles of natural justice.
- b) by directing the II Party to reinstate the I Party with full back wages, continuity of service and all the ancillary benefits.

3. Brief details mentioned in the counter statement are as follows:-

The II Party states that, Sh.D.Narayanaswamy/I Party has Served as Peon at Bangalore, Yelahanka Branch of the II Party Bank during the period from 16.07.1993 to 30.07.2002. The Yelahanka police arrested the I Party workman on 24.06.2002 and he has been remanded to judicial custody from 24.06.2002 to 08.07.2002 and that the I Party workman has been released on bail on 25.06.2002. In respect of certain serious misconduct reported to have been committed by the I Party workman while working at the Yelahanka Branch, he has been placed under suspension on 31.07.2002 in terms of order dated 29.07.2002 of the competent authority. In fact, on 25.05.2002 at around 8.30 p.m with a malafide intention, the I Party workman attempted to burgle Yelahanka Branch of the Bank, and clandestinely misused the key of the back door lock of the Branch premises which has been kept in the table drawer in the Manager's Cabin. Further, with a view to conceal the fact of his arrest and subsequent release on bail, the I Party workman submitted a leave application on 24.06.2002 seeking sanction of privilege leave for 8 days from 24.06.2002 to 01.07.2002 purported to be issued by the Bowring & Lady Curzon Hospital, Bangalore. Further, the I Party workman has been issued a charge sheet dated 30.08.2002 along with list of documents by which, and also, the list of witnesses, by whom, the management proposes to substantiate the charges levelled against him and a photo copy of

each of the documents have been enclosed. A written domestic enquiry has been ordered into the matter on 27.09.2002. Sri S.V.S Dattatreya has been appointed as the Enquiry Officer and Sri. Janardhan V Prabhu has been appointed as the Presenting Officer vide orders dated 27.09.2002. The Disciplinary Authority informed to the Enquiry Officer that the Court of Metropolitan Magistrate, Bangalore in terms of orders dated 29.09.2004 has acquitted the I Party workman of the Criminal Charges. By letter dated 12.03.2005, the suspension order of the I Party workman has been revoked and he has been directed to join for duties at the II Party Bank's Zonal Office at Belgaum. The I Party workman submitted that he denies the charges and claims to make his defence. In terms of letter dated 10.11.2004, the Disciplinary Authority has stated that the I Party has been acquitted of the criminal charges and he has directed the Enquiry Officer to continue with the enquiry from the regular hearing stage. Thereafter, the Enquiry Officer submitted his report on 20.02.2006 and with the findings of the Enquiry Officer and having regard to the gravity of misconduct, the Disciplinary Authority has imposed on the workman, the punishment of dismissal from the services of the Bank vide order dated 10.04.2006. Thereafter, the I Party preferred an appeal before the Assistant General Manager and the Appellate Authority having found no merit in the grounds raised in the appeal, dismissed the appeal in terms of order dated 12.10.2006. Further, the submission of the I Party in his claim statement about his date of birth, educational qualification, date of joining of the Bank are the matters of record. The allegations made by the workman about victimization on account of his cadre in the Bank and caste in the society, are without any basis, not correct and hence the same is denied. Further, it is not correct that the workman has been honourably acquitted by the Court of Chief Judicial Magistrate, Bangalore in Criminal Case No. 449/2002. It is true that the suspension imposed upon the workman has been revoked by the Competent Authority after reviewing. Further, mere dropping of some of the witnesses by the management cannot be used as an excuse to claim that there is no case against the workman. It is submitted that the charges levelled against the workman in the departmental enquiry are not identical to the charges for which the workman has been prosecuted on the criminal side. The Report of Enquiry Officer is therefore not perverse as alleged by the workman. The standard of proof in a criminal trial, is that it has to be proved beyond reasonable doubt and in a domestic enquiry, what is required is preponderance of probabilities of the case. The misconduct proved against the I Party workman in the enquiry is of very serious in nature. The punishment is imposed upon the I Party workman for the serious misconducts proved against him in the enquiry and the same is just and proper and the workman is not entitled for reinstatement in the services of the Bank. Therefore, the II Party states that, the prayer of the I Party workman to reinstate him in services of the Bank by setting aside the orders dated 10.04.2006 of the Disciplinary Authority does not merit any consideration and deserves to be rejected with exemplary costs in the interest of justice.

4. The point that arises, for consideration in the present matter is as follows:-

“Whether the II Party/Bank is justified, in imposing the order of punishment of dismissal from service of I Party/workman from 10.04.2006? If not, to what relief the workman is entitled to get?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

The I Party has specifically stated in the claim statement that, the Criminal case filed against the I Party in CC No. 499/02, and I Party has been acquitted on 29.09.2004 by Criminal Court and in the Criminal case the main witnesses are 3 officers from the II Party/Bank and the Criminal Court has come to the conclusion that there is no material records to establish the involvement of the I Party in the alleged offence and the evidence of the witnesses are doubtful and cannot be believed. Further, in the claim statement itself I Party has stated the II Party/Bank has continued the Departmental Enquiry against the I Party by putting the 3 officials as witnesses against him and thus the II Party has victimized the I Party and for the loss of the keys of the bank it should be on the officers who are the holders of the keys and it is only the outsiders tried to commit the burglary and not the I Party. The bank has filed the judgment dated 29.09.2004 delivered in Criminal Court in Criminal Case No. 499/02 as Ex M-38(DE). Further, the Enquiry Officer in his report dated 20.02.2006 marked as Ex M-10(DE) has pointed out that in terms of letter dated 10.11.2004, the Disciplinary Authority while informing that the I Party has been acquitted of the Criminal charges, advised him to continue with the enquiry from regular hearing stage and as such as per the letter dated 26.11.2004 he has posted the enquiry. Hence, it is clear the Enquiry Officer is also aware of the acquittal granted by the Criminal Court in favour of the I Party herein and the Enquiry Officer has not recorded any valid reasons in proceedings with the departmental enquiry from regular hearing stage and the Enquiry Officer has just stated that as per the advice of the Disciplinary Authority he has continued with the enquiry from regular hearing stage. Further, it is relied on behalf of I Party, the judgment reported in 2006 AIR SCW 2709 (Before Mr. Justice A R Lakshmanan and Mr. Justice. R V Raveendran), Civil Appeal No. 2582 of 2006, dated 10.05.2006, in the case of G M Tank Vs State of Gujarat & another, wherein, it is held as follows:- “The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.” Accordingly, in the present case also, it will be unfair to proceed with the departmental enquiry and the Enquiry Officer has also just stated,

in his report, that the Disciplinary Authority has advised the Enquiry Officer to continue with the enquiry from the regular hearing stage.

6. Further, in the same citation filed on behalf of I Party, reported in 2006 AIR SCW 2709 (Before Mr. Justice AR Lakshmanan and Mr. Justice. R V Raveendran), Civil Appeal No. 2582 of 2006, dated 10.05.2006, in the case of G M Tank Vs State of Gujarat & another, it is held as follows:- “The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the findings that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest.” Therefore, in the light of the principle laid down by their Lordship of the Hon’ble Supreme Court, the findings of the enquiry officer, that the workman is guilty of the charges, in spite of the acquittal judgement of criminal court, cannot be sustained in the eye of law. Also, the Hon’ble High Court of Bombay (W.P. No.4655/1944 dated July 18, 1998) Mr. Justice A.D Mane, Mr. Justice A.B. Palkar in the case of Sumangal Veerbadur Rana Vs State of Maharashtra & others, it is particularly held as follows: - “Domestic enquiry- Relevance of acquittal in criminal proceedings – Even though it is not binding, due consideration must be given before applying mind for imposing punishment – Workman acquitted of charges of theft – Acquittal by court – not considered – no show cause notice was given – Enquiry vitiated on both counts.” Further, in the judgment reported in 1985-1-LLJ 101, the Hon’ble Supreme Court of India (Civil Appeal No.4692 (NL) of 1984, dated 8th May, 1985), Mr. Justice D.A. Desai, Mr. Justice V. Balakrishna Eradi, Mr. Justice V. Khalid in the case of Anil Kukar Vs Presiding Officer and Others, It is clearly held as follows:- “Disciplinary enquiry has to be a quasi – Judicial enquiry – Enquiry Officer should give reasons for the conclusion and also why he preferred Management’s evidence to that of the delinquent employee’s – Termination order based on a report containing conclusions without reasons, is unsustainable.” In the present case also, it is seen that there is perversity in the finding of the Enquiry Officer, for the above mentioned reasons.

7. Further, on behalf of II Party it is submitted that in the charge sheet, apart from the attempt to commit burglary of II Party/Bank by the I Party, there is second charge regarding filing of false medical certificate and also seeking sanction of privilege leave by the I Party. On the date of filing of complaint as per Ex M-6, the culprits are not known and only on 24.06.2002 the I Party has been arrested for the criminal case and he has been acquitted on 29.09.2004. Further, the Enquiry Officer has clearly observed that MW-4 the Manger has stated that, the I Party has been treated only as outpatient and he cannot say whether Ex M-27 has been issued to I Party as an inpatient and without seeing the records he cannot say whether the name of the I Party has been mentioned as B Narayana swamy and as per Ex D-10, the I Party has taken treatment as outpatient of the hospital and the I Party has been taken to police station on 23.06.2002 and tortured there and it is also not necessity for examination of the Doctor of Bowring Hospital as contended by the I Party in the written brief and there is no eye witnesses to the incident of attempt to commit burglary and the conclusions are to be drawn on the basis of various circumstances surrounding the incident only. In fact, the I Party herein has cited the judgment of the Hon’ble Supreme Court before the Enquiry Officer also. However, the same has not been considered in the proper prescriptive by the Enquiry Officer.

8. On a careful perusal of material records it is seen that the II Party/Bank has not established the misconduct committed by the I Party as per the principles of the preponderance of probabilities. Further, Appellate Authority by order dated 12.10.2006 also stated that acquittal of the I Party by the Court does not carry weight as the same has not been done on merits and it does not debar the departmental proceedings. However, on a perusal of Criminal Court judgment it is seen that Criminal Court has passed judgment on merits only. In the light of the above mentioned facts and citations mentioned herein above, the various citations relied on behalf of II Party are not helpful to the submission made on behalf of II party. Further, in the judgment relied on behalf of II party and reported in 1975 II LLJ 513, in the case of T.V. Gowda Vs State of Mysore and others it is held as follows:- “Disciplinary proceedings held analogous to civil proceedings – As Civil Court is not bound by Criminal Courts decision, so also Disciplinary Authority held not bound by acquittal by Criminal Court.” Also in 2004 (8) SCC 200, in the case of Krishnakali Tea Estate Vs Akhila Bharatiya Cha Mazdoor Sangh and another it is held as follows:- “The approach and objectives of the Criminal proceedings and disciplinary proceedings are all together distinct and different – Labour Court is not bound by the findings of the Criminal Court – on facts, Labour Court has perused the order of the Criminal Court and the exhibits produced therein and come to an independent conclusion that the order of the criminal case had no bearing on the proceedings before it.” However, on the careful perusal of the above mentioned Hon’ble Supreme Court Citations filed on behalf of I party and also, in the facts and circumstances of the present case, the submissions made on behalf of II Party are not helpful to II party, particularly, with regard to the submission that the acquittal of I Party in Criminal Court need not be considered by the II Party in conducting the departmental enquiry. Further, the I Party has clearly stated in the evidence that, the Enquiry Officer’s report is not based on facts on record and hence perverse and also aimed at victimizing the I Party. Further, MW-1 has admitted that, he has not seen the personal file of the I Party and he is not aware of the decision taken by the Hon’ble High Court in the matter and he is not aware as to whether the II Party bank has initiated any criminal case against I Party in relation to subject matter. Hence, his evidence is also not clear and not natural, to accept the submissions made on behalf of II Party.

9. The Hon'ble Apex Court in a judgment reported in 2008 AIR SCW 3460 in the matter of MAVJIA C LAKUM Vs CENTRAL BANK OF INDIA, has clearly observed as under:

“After all the Tribunal has to judge on the basis of the proved misbehaviour. In this case we have already recorded that the Tribunal was firstly correct in holding that the misbehaviour was not wholly proved and whatever misconduct was proved, did not deserve the extreme punishment of discharge. The learned judge seems to be of the opinion that if the enquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that is not the correct law. Even if the enquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed that does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under section 11-A has to be exercised judiciously and the interference is possible only when the tribunal is not satisfied with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned.....The Tribunal was justified in appreciating the fact that the charges were not only trivial and were not so serious as to entail the extreme punishment.....Though the learned judge had discussed all the principles regarding the exercise of power under Section 11-A of the Industrial Disputes Act as also the doctrine of proportionality and the Wednesbury's principles, we are afraid the learned judge has not applied all these principles properly to the present case.”

In the above case, the Hon'ble Apex Court has considered the scope of enquiry by the Industrial Tribunal and the finding of the learned Single judge of the Hon'ble High Court as regards to the power of the Industrial tribunal, in case of enquiry held as fair and proper and the Industrial tribunal cannot go into the question of the evidence or the quantum of punishment. The Hon'ble Apex Court has held that the said law is not a correct law. Even in case the enquiry is held fair and proper, the Tribunal has to find out as to whether the findings arrived at by the Enquiry Officer are correct findings and supported by evidence and also find out as to whether the punishment is shockingly disproportionate. Accordingly in the present case also, appropriate award has to be passed, based on the above mentioned facts and circumstances.

10. Further, the I Party has filed the affidavit, and also stated that he has been victimised as he belongs to lower cadre of clerk and the officers of the bank belong to higher cadre of post. Further, it is seen that, the II Party/Management is adopting Super technical and hyper technical measures, so as to stop, the I Party/workman from getting legal benefits, as per the provisions of the Industrial Disputes Act. Further, the intension of the legislature in enacting the social welfare provisions of Industrial Disputes Act would be defeated, if the untenable submissions of the II Party/Management are taken into consideration.

11. On a careful perusal of material record it is seen that there is sufficient force in the said submission of I Party. Further, the I Party has also, pointed out that the II Party should have taken proper disciplinary action against the officers for the loss of keys and also for their negligence and hence, the action of the II Party as against I party alone is illegal and also discriminatory. The said submission of I Party has not been answered, suitably by the II Party, in the appropriate manner. Further, the I Party has pointed out that after the acquittal judgement of the Criminal Court, the I Party has sent several representations to II Party and the same has not been considered by the II Party management. Further, in the present case it is seen that II Party has not established that I Party has done the alleged misconduct as per the principles of preponderance of probability. In the judgement delivered in the case of Kendriya Vidyalaya Sangathan Vs J.Hussain 2013 SCC vol 10 page 106 @ paras 7&8,it is clearly observed as follows:- “A host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department or establishment where he works, as well as extenuating circumstances, if any exists.” Also, in the case of Indian Railway Construction Company limited Vs Ajay Kumar reported in 2003 (4) SCC page 579, it is observed as follows:- “It will also be pertinent to mention that victimisation can be said to have occurred only when the charge against the employee is false.” In the present case also, it is seen that the charge as against the I Party has not been established by the II Party, in accordance with law and II Party has not strictly followed the law and there is violation, as such. On a careful perusal of entire materials on record, it is seen that II Party has not proved the alleged misconduct committed by the I Party, as per the principles of preponderance of probability and in the judgement delivered in the case of Delhi Transport Corpn. Vs D.T.C. Mazdoor Congress and Ors, (1991) Suppl. 1 SCC 600, it is clearly observed as follows:- “It is well settled in law that right to life enshrined under ART.21 of the Constitution would include right to livelihood. The order of illegal termination of the service of the I Party visits with civil consequence of jeopardizing not only livelihood but also puts an end to the career.”

12. In the judgment delivered in WP No. 17316 of 2005(LK), by the Hon'ble Mr. Justice N. Kumar, dated 08.08.2005 in the case of The Divisional Controller Vs Sh. N. Ramachandra, it is held as follows: "As the discretion exercised by the Labour Court cannot be said to be perverse or arbitrary and when the said discretion has been exercised in a judicious manner after taking into consideration the facts of the case and the law governing the same, I do not find any infirmity in the award to interfere with the said discretion exercised by the Labour Court." In the present case also, it is seen that this Court has to exercise the said discretion, as there is perversity in the finding of the Enquiry officer, for the above mentioned reasons.

13. Further, in the judgment reported in 1999-I-LLJ 1094 the Hon'ble Supreme Court of India (CA No.1906/1999 dated March 30, 1999) Mr. Justice S. Saghir Ahmad and Mr. Justice V.N. Khare in the case of Capt. M. Paul Anthony Vs Bharat Gold Mines Ltd. & Another, It is observed as follows by The Hon'ble Supreme Court, "That a Criminal Case, based on the same set of facts as those on which the departmental proceedings were based, had been thrown out and the appellant acquitted. It would therefore be unjust and oppressive, to allow, the findings recorded at the ex-parte departmental proceedings, to stand. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

14. Further, in the case reported in 1978-II LLJ 84, the Hon'ble Supreme Court of India (Civil Appeal No. 2313(N) of 1968, dated 19th April, 1978) Mr. Justice R. S. Sarkaria, Mr. Justice P.S. Kailasam in the case of Nand Kishore Prasad Vs State of Bihar and others, it is clearly held as follows: - "Suspicion cannot be allowed to take the place of proof even in domestic enquiries. In punishing the guilty, scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials and to disciplinary enquires held under the statutory rules. The High Court examined the records of the domestic Tribunal, not with a view to make out or reconstruct a new case, but only to see whether there was some evidence of the primary facts relied upon by the domestic Tribunal in support of II Party's contention. There is no impropriety in the course adopted by the High Court." In the case on hand, also, it is seen that there are no relevant material on record in support of II Party's contention. Also, the Hon'ble Supreme Court of India (C A Nos. 322-323/1999 dated September 20, 2000) Mr. Justice S. Rajendra Babu, Mr. Justice D.P. Mohapatra in the case of Tata Engineering Vs Locomotive Co. Ltd and Jitendra Prasad Singh and Another, it is specifically held as follows:- "High court holding singling out one of the appellants for dismissal not proper – Supreme Court refused to interfere." In the present case also, it is seen that the said workman I party alone has been punished, though the Criminal Case has also ended in acquittal. Further, in the judgment reported in 1985-LLJ-184, the Hon'ble Supreme court of India (Civil Appellate Jurisdiction), (Civil Appeal No.480(N) of 1973, dated 12th March, 1985), Mr. Chief Justice Y.V. Chandarchud, Mr. Justice D.A. Desai, Mr. Justice Amarendra Nath Sen in the case of Shankar Dass Vs Union of Indian and another, it is significantly held as follows: - "Application of mind before imposing penalty – The right to impose penalty implies duty to act justly and there is no right to be heard on penalty." Also, in the judgment reported in I.L.R. 1994 KAR 1429, Mr. Justice Tirath Singh Tahakur, J, in the case of Irappa Vs Management of M/s Karnataka State Construction corporation Ltd, it is clearly held as follows:- "Duty of the Inquiry Officer: to act independently, fairly, objectively and record reasons for conclusions drawn." In the present case also, it is seen that the Enquiry Officer has not given the findings with valid reasons.

15. Also, in the judgment reported in 1999-I-LLJ 604, the Hon'ble Supreme court of India (C.A. No.6359-6361/1998 dated December 17, 1998), Mr. Justice. S Saghir Ahmad, Mr. Justice S.P. Kurdukar in the case of Kuldeep Singh Vs Commissioner of Police and Others, it is held as follows: -

"Domestic enquiry-Findings of guilt based on no evidence-would be perverse and amenable to judicial scrutiny." Also, in the judgment reported in 1994 Supp(3) SCC 674 (before Hon'ble Mr. Justice K. Ramaswamy & N Venkatachala. J.J) in the case of Sulekah Chand and Salek Chand Vs. Commissioner of Police and others, it is specifically held as follows: - "Service Law – suspension- Criminal prosecution, suspension and departmental enquiry on the same charge – Acquittal on merits in prosecution – Effect – Held, the employee became entitled to blotless reinstatement." Also, in the judgment reported in 1991(2) Kar.L.J.423, the Hon'ble High Court of Karnataka at Bangalore, 14th June, 1991 Mr. Justice N.Y. Hanumanthappa. J, in the case of S. N. Gurumurthy Vs. Karnataka State Handicrafts Development Corporation Limited, it is particularly held as follows:- "Domestic Enquiry – finding of guilt if recorded without examination of material witnesses available – Fatal." Further on a careful scrutiny of the materials brought on record in the present case also, it is found that the II Party, has not established the allegation made as against the I Party-workman, on the principle of preponderance of probability, and consequently, the punishment imposed on the I Party is also not legal and justified.

16. Further on behalf of II party, the Judgement reported in AIR 1998 SC 2311 (Union Bank of India Vs. Vishwa Mohan) has been relied upon and in the said citation the mis conduct has been proved against I party. However, in the present case the II party has not proved the alleged misconduct committed by the I party as per the principles of

preponderance of probabilities. Further in the Judgement reported in AIR 1968-SC-266 (Central Bank of India Vs. Karunamoy Banarjee), also it is observed that the workman admits himself the guilt. However, in the present case, it is found that workman/I parry has not admitted his guilt and on the other hand, the I party has strongly denied the said allegations made by the II party. Further in the Citation reported and relied on behalf of the II party, 1996 Lab IC 1056 SC (municipal Committee Bahadurghad Vs. Krishan Behan), the court has dealt with the case of misappropriation and corruption. However, in the present case, there is no such misappropriation or corruption alleged by the II party as against the I party herein. Also in the case reported in AIR 1997 SC 2661 (Punjab Dairy Development Corporation Ltd., Vs. Kalasingh) it is observed that the management is also loosing confidence that workman would faithfully carry on his duties in view of proof of misconduct. But, in the present case the II party has not proved the alleged misconduct committed by I party, even after taking into consideration, all the materials, which are logically probative for the prudent mind, are taken into consideration in the present case.

17. Further, in the judgement relied on behalf of II party and reported in 2000(7)SCC 517, (Janatha Bazar (South Canara) Central Co-operative Stores Ltd., and others Vs. Secretary, Sahakari Nowkarara Sangha and others)- it is held as follows only: “the discretion of employer exercised in imposing penalty after misconduct proved in a domestic enquiry.” At the same time, in the present case, the alleged misconduct committed by the I party has not been proved by the II party, in accordance with law. Also, in the Case reported in 2005(3)SCC 254 Divisional Controller KSRTC Vs. AT Mane, it is held as follows only “loss of confidence as a primary factor and not the amount of money misappropriated.” Once again in the case reported in 1970 (2) MLJ 364 (Mysore Lamp workers Vs. Management , it is held as follows only “where grave misconduct has been proved against the employee.” In the case reported in 1960 II LLJ 175 Calcutta: (National Tobacco Co. Ltd Vs. IV Industrial Tribunal): , it is held as follows only “Where it is found that the employee is guilty of misconduct.” Further, in the Case reported in 2006(1)SCC 430: (Hombegowda Educational Trust and another Vs. State of Karnataka and another): it is held as follows only, “charges are clearly established by the II party.”

18. Further, in the judgement relied on behalf of II party and reported in 2002 (1) LLJ 234 SC (Regional Manager RSRTC Vs. Ghan Shyam Gupta): it is observed as follows only, “Dismissal of Respondent for misconduct.” Also, in the case reported in 2000 II 1395 SC (Janatha Bazzar South Canara Central Co-Operative Whole Sale Stores Ltd and others): It is held as follows only “Labour Court finding charges of misappropriation and breach of trust against workmen proved.” Again in the case reported 1987 Lab IC 77 (Wimco Shramik Union Vs. Seventh Industrial Tribunal): it is observed as follows only, “Workman found guilty of theft.” However, in the present case it seen that II Party has not clearly proved the allegations made as against I party and on the other hand I party has clearly proved about the victimisation and unfair labour practice and also perversity of finding in the Enquiry Officer’s report, in accordance with law.

19. Further, the awarding of reinstatement does not amount to automatic conferment of back wages as held in 2009 (4) LLJ 667 (SC) Malla C.N. Vs State of Jammu and Kashmir & others. Awarding of back wages, depend upon other factors and circumstances. The I Party has pointed out in the claim statement that the I Party has been thrown out of employment and is facing hardship. In the affidavit also, the I Party has stated that with no financial income he is facing great hardship. However, the claim of the workman that he is entitled for the full back wages, cannot be considered, having regard to fact that the I Party has not performed any work for II Party from 10.04.2006 to till date, namely, for more than 11 long years, and also, the workman has admitted in his evidence that he is driving the Auto rickshaw of others, by taking it on rent basis, and he is earning about Rs.100/- by driving the Auto rickshaw, and also, in order to balance the interest of both the parties, this Court is of the considered opinion that in the facts and situation of the present case, 50% back wages only can be granted to the I Party. Further, in the judgment reported in ILR 1996 KAR 1874, Mr. Justice. Kumar Rajaratnam, in the case of S. Rathnakar Amirth Kamath Vs K.S.R.T.C. it has been held as follows:- “Industrial Dispute Act (Central Act No. 14 of 1947) Sections 2(s) & 25-F workman’s removal from service without complying with section 25-F, held, illegal-having suffered a long litigation, held, entitled not only continuity of service but with 50% of back-wages.” Accordingly it is found that in the above mentioned facts and circumstances the I Party is entitled to get 50% back wages from the date of termination namely 10.04.2006 to till the date of reinstatement. Having regard to the facts and circumstances, and long gap from the date of dismissal of I Party, from 10.04.2006 to till date, it is seen that granting of 50% back wages would be adequate.

20. It is well settled by the catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubts. The II Party cannot make submission in an aprobate or reprobate manner. It is obligatory on the part of the tribunal to consider the entire materials on record and to give a finding on several contentions urged by both the parties. The Tribunal has to discharge its statutory function in terms of the Industrial Dispute Act, based upon the facts and circumstances of the present case only. Further, in the judgment reported in W.P. No. 17902 of 2009, (Before Mr. Justice. K. Chandru), in the case of G.R. Swamy Vs The presiding Officer and Deputy General Manager, dated 13.03.2012, it is held as follows only:- “The only question was whether on weighing the probabilities, the material placed by the petitioner was acceptable or rendered probable.” Further, it is pointed out on behalf of II Party that departmental enquiry is conducted to maintain discipline in the service and

efficiency of the public service. However, it is seen that the II Party has failed to prove as per the principles of preponderance of probability that I Party has committed the alleged misconduct. Even the certain other allegations mentioned in the letter of charge in the departmental enquiry has not been established by the II Party in accordance with the principles of preponderance of probability.

21. Further, it is the well settled law as held in AIR (SC) – 2004-0-4776/SCC -2005-9-331/ AIR (SCW) – 2004-0-545, Supreme Court of India (Before Mr. Justice. N.S. Hegde and Mr. Justice. S.B. Sinha) Civil Appeal dated 27.09.2004, in the case of Sangham Tape Company Vs Han Raj, particularly, it is held as follows only:- “Precedent-Fact Situation Obtaining in one case cannot be said to be precedent for another.” In the present case also the various citations filed on behalf of II Party have been considered to the prevailing factual position of the present case and the citations have been carefully considered in the light of the above mentioned facts and circumstances and it is found that the various citations cited on behalf of II Party do not fall within facts and circumstances of the present case, so as to accept the submission made on behalf of II Party.

22. Further, it is also evident, from the close reading of the facts and situations mentioned above, that the I Party is entitled to get the reinstatement, relief as prayed for in the claim statement. In the light of the above mentioned facts and situations, this Court is awarding 50% back wages from the date of order of dismissal, and also, on the careful appreciation of the submissions made in the statements, and also, the oral and documentary evidences adduced by both the Parties, I Party is ordered to be reinstated with the benefit of continuity of service and other consequential benefits that he would have received in the absence of the impugned penalty of removal from service, but with 50% of back wages. However, the workman/I Party is entitled for continuity of service for the other purposes. For the above mentioned facts and circumstances and situation, it is found that the I Party/Workman is entitled for re-instatement, with benefit of continuity of service and other consequential benefits that he would have received, in the absence of the impugned penalty of removal from service, but with back wages of 50%, for the above mentioned peculiar reasons. There shall be continuity of service. Thus, the point is answered accordingly. Hence, the following award is passed.

AWARD

The II Party is not justified in imposing the punishment of dismissal from the services of I Party/Sh. D Narayana swamy and the said II Party is directed to reinstate I Party with the benefit of continuity of service and other consequential benefits, that he would have received in the absence of the impugned penalty of dismissal from the services of I party, but with 50% back wages, and the present reference is ordered accordingly, without costs, for the above mentioned peculiar facts and special circumstances of the present matter.

(Dictated, transcribed, corrected and signed by me on 26th May, 2017)

V. S. RAVI, Presiding Officer

Witness examined on behalf of I party:

WW -1	Sh. D. Narayana Swamy, Workman
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Witness examined on behalf of II party:

MW -1	Sh. Kolli Ajoykumar, Chief Manager
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नई दिल्ली, 14 जून, 2017

का.आ. 1474.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 15/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/106/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th June, 2017

S.O. 1474.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2010) of the Central Government Industrial Tribunal-cum-

Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 14.06.2017.

[No. L-12011/106/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/15 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF SYNDICATE BANK

The General Manager
Syndicate Bank
Personnel (W),
IRD, Head Office,
Manipal (Karnataka).

AND

THEIR WORKMEN

The Assistant Secretary,
Syndicate Bank Staff Association,
Room No.27, Wadia Building,
9/B Kawasji Patel Street, Fort,
Mumbai - 400 001.

APPEARANCES:

FOR THE EMPLOYER : Mr. R.N. Shah, Advocate

FOR THE WORKMEN : Mr. Umesh Nabar, Advocate

Mumbai, dated the 3rd May, 2017

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-12011/106/2009-IR (B-II) dated 02.02.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the Syndicate Bank Staff Association for increment and other service benefits for the period of temporary services rendered by Shri Hemant V. Sawant as temporary attender is legal, just and proper ? What relief the workman concerned is entitled to ?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed its statement of claim at Ex-7.

3. It appears that second party union has espoused the cause of its member Shri Hemant Sawant who was admittedly working as a temporary attender w.e.f. 15.4.1986 and continued to work till 6.8.1992 i.e. for 337 days. According to second party union w.e.f. 29.3.1997 the concerned workman was taken on probation and thereafter by an order dated 10.9.1997 he was confirmed in the employment of the bank. The absorption of the concerned workman was in continuation with the earlier service rendered by him to the bank as Attender in the Region / Zonal office, Mumbai. Therefore the concerned workman ought to have been taken on regular service as per clause 20.8 of Bipartite Settlement dated 19.10.1996. By letter dated 16.1.1998 the concerned workman had requested the bank to extend him the incremental benefits / service benefits along with other attentive benefits. He [concerned workman] by his another letter dated 1.8.1998 had pointed out that those employees who were working as a temporary along with concerned workman and were eventually regularized in service were given benefit of increments along with other attentive benefits. However, the bank did not extend the benefits as claimed by the concerned workman by its letter dated 8.2.2008. The bank agreed to extend benefits for the purpose of eligibility of gratuity but denied to grant service incremental benefits and arrears of salary and other benefits to the concerned workman. By letter dated 11.8.2008 the

concerned workman again made representation to the bank requesting for salary arrears, incremental benefits and leave etc. but the same letter was ignored by the bank. By the letter dated 29.11.2008, second party workman demanded that the concerned workman be given justice in as much as the other similarly situated employees has been granted the arrears and other incremental benefits. Then all attempts of amicably resolution of the dispute failed, second party raised industrial dispute with a request to Assistant Labour Commissioner [Central] to intervene into the matter. Conciliation proceedings ended in failure and a failure report was submitted to the Central Government. The Ministry of Labour, Govt. of India by an order of reference dated 2.2.2010 has referred the dispute to this tribunal.

4. The second party union is therefore asking that the concerned workman be given the arrears of salary and other consequential benefits like increment, leave etc. as envisaged in the clause of Bipartite Settlement dated 19.10.1996 along with interest @ 18% per annum on the amount of arrears and other benefits.

5. First party bank has resisted statement of claim of the concerned workman by filing the written statement (Ex.8). It is not disputed that the second party workman has worked temporarily for 337 days w.e.f. 15.4.1986 to 6.8.1992 and further worked during the period from 13.8.1992 to 27.3.1997 as temporary attender. However, it is the contention of the bank that the second party workman was engaged as temporary attender from 13.8.1992 in the leave vacancy of Shri R.M. Shetty. His appointment was purely on temporary basis, based on temporary increase of workload or during the absence of regular attender. Such appointment was for a temporary and specific period. After the said specific period there is no relation whatsoever it may be.

6. It is then contention of the bank that Shri R.M. Shetty, a permanent regular attender voluntarily abandoned service in 1997 without giving any oral intimation to the immediate superior or management of the first party bank. Due to vacancy that arose out the abandonment of permanent employee, the person concerned was appointed on probation on six months on 31.3.1997 and thereafter he was absorbed into permanent service as attender w.e.f. 30.9.1997. The concerned workman was on temporary period of service from 9.12.1992 till he was absorbed in permanent service on 30.9.1997. This is reckoned for the period for the limited purpose of calculating the gratuity. Therefore the second party workman has no case for granting relief as prayed.

7. It is thus denied that Bipartite Settlement provides any grant of benefit to the person concerned.

8. It is thus contention of the bank that the various acts settlements are applicable to the regular / permanent employees of the first party bank and not for the persons who worked on temporary basis and performed duties purely on temporary and specific period. Since the concerned workman worked as a temporary attender and his appointment was purely on temporary basis, he is not entitled to any benefits.

9. It is submitted by the bank that the period of temporary employment of the temporary employee cannot be taken into consideration as a part of his probationary period. As per the party's recruitment policy the employment benefits such as bonus, gratuity, PF, leave, increment and all other benefits such as incremental benefits, service benefits etc. will be effective from the date of his confirmation in the bank and not during the temporary period in which the probationer is not entitled to incremental benefits, service benefits etc.

10. It is then contended that the concerned workman has not rendered service continuously. There is no provision in Bipartite Settlement to include the temporary service prior to probation as permanent service. It is thus submitted by the bank that the concerned workman was not extended to any type of benefits for the past service rendered by him as a temporary attender. It has thus sought rejection of the reference.

11. Following issues are framed at Ex.10. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the workman Hemant V. Sawant is entitled to increment and other service benefits for the period of temporary services rendered by him ?	No
2.	What relief the workman is entitled to ?	No
3.	What order ?	As per final order

REASONS

Issue No. 1:-

12. So far contentions go, it is admitted position that the concerned workman was working as temporary attender. He has worked in leave vacancy / temporarily for 337 days from 15.4.1986 to 6.8.1992 and further worked during the

period from 13.8.1992 to 27.3.1997 as temporary attender. It is also admitted that he was absorbed in permanent service on 30.9.1997 being against the permanent / regular vacancy. The question creeps in as to whether he is entitled to increment and other service benefits for the period for which he worked as temporary attender.

13. In his cross-examination the concerned workman has admitted that when he was working as temporary attendant he was not getting benefits of permanent employee. He also admits that he worked from 13.8.1992 in the leave vacancy of Shri R.M. Shetty. Admittedly Shri R.M. Shetty was working in Zonal office and in 1997 Shri R.M. Shetty abandoned his service. Admittedly thereafter on 31.3.1997 the concerned workman was appointed on probation for the period of six months and on 30.9.1997 and he was given appointment as permanent employee in the Syndicate bank. It is admitted by him in his cross-examination that after he was appointed as a permanent employee, he is getting the benefits of permanent employee including the increment and service benefits.

14. Learned Counsel for the second party workman submitted that by virtue of 20.8 of Bipartite Settlement a temporary workman may also be appointed to fill up the permanent vacancy and if such temporary workman is eventually selected for filling of the vacancy period, such temporary employment will be taken into consideration as a part of his probationary period. The submission is to the effect that 20.8 of Bipartite Settlement envisages that if temporary workman eventually selected for filling of the vacancy period of such temporary employment will be taken into consideration as a part of his probationary period. Since the workman was eventually selected for the purpose of filling of the vacancy in the bank on probation w.e.f. 29.3.1997 and was in continuation of his earlier service rendered as temporary employee since 1986 and thereafter from 18.5.1992 to 27.3.1997 he is entitled to the incremental benefits for having worked in the temporary capacity.

15. However, it has been conveniently forgotten that by virtue of 20.8 of Bipartite Settlement if temporary workman is eventually selected for filling of the vacancy period of such temporary employment will be taken into consideration as a part of his/her probationary period provided

1. A temporary workman was appointed to fill up a permanent vacancy.
2. Such temporary employment shall not exceed a period of 3 months.

16. Since the concerned workman admittedly was appointed on probation in place of Shri R.M. Shetty as temporary employee, question as to any benefits prior to him being employed as a permanent employee cannot arise.

17. Even otherwise it is clear that as per recruitment policy the employment benefits such as bonus, gratuity, PF, leave, increment and all other benefits such as incremental benefits, service benefits etc. are effective from the date of his confirmation in the service and not during the temporary period in which the workman concerned is on probation period. The probationer is not entitled to incremental benefits, service benefits etc. and he will be granted increments only after confirmation in the service. Clause 20.7 of Bipartite Settlement clarifies that a temporary employee means a workman who has been appointed for the limited period for work it is essentially of a temporary nature or who is employed temporarily as an additional workman in connection with the temporary increase in the work of permanent nature and includes the workman other than a permanent workman who is appointed in temporary vacancy caused by the absence of a particular workman. In view of this clause 20.7, it is clear that there is no provisions in view of Bipartite Settlement to include a temporary service prior to probation as a permanent service. In view of admission of the concerned workman in his cross examination that he was not getting the benefits of permanent employee when he was working as temporary attender it is clear that no such benefits were available to him when he was working as temporary attender. In his cross examination the concerned workman has pleaded ignorance about Bipartite Settlement between the union with the bank. He does not know the provisions of Bipartite Settlement but then he is claiming the benefits as per the provisions of Bipartite Settlement. But then it is clear that even in view of provisions of Bipartite Settlement the concerned workman was not entitled to increments and other service benefits for the period of his temporary service rendered by him.

18. Realising this difficulty, Learned Counsel for the union submitted that Shri Prakash Shinde who was identically placed as workman was given increment and other benefits for the period of temporary service rendered by him. However, there is no document on record to show that said Shri Prakash Shinde had been granted benefits of temporary service rendered by him. Even the concerned workman in his cross examination has admitted that he has not produced any document to show that Shri Prakash Shinde was given benefits and increments for the period of temporary service rendered by him. It is not possible therefore to accept the submission of the concerned workman that similarly situated other workmen were given benefits by the bank in respect of temporary service rendered by them.

19. Considering all these facts, I find that the concerned workman is not entitled to increment and other service benefits for the period temporary service rendered by him. Issue No.1, is therefore answered accordingly in the negative.

Issue No. 2 & 3

20. In view of my findings to Issue No. 1, I find that the concerned workman is not entitled to any relief. Thus the order:

ORDER

Reference is rejected with no order as to costs.

Date: 03/05/2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1475.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 90/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/105/2005-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1475.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 90 of 2005) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 05.06.2017.

[No. L-20012/105/2005-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 90/2005

Employer in relation to the management of Patherdih Coal Washery of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri U. N. Lall, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated 05/05/2017

AWARD

By order No. L-20012/105/2005-IR(C-1) dated 02/11/2005, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Coal Washeries Workers Union from the management of BCCL Patherdih Coal Washer that S/sh. A.K. Sinha, Baliram Pandey and Manater Bhandari may be regularized as sample collectors is justified? If so, to what relief are the workmen entitled and from what date?

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the sponsoring Union/workman. Management is present. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1476.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 64/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/79/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1476.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 64 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 05.06.2017.

[No. L-20012/79/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 64/2009

Employer in relation to the management of Kustore Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri Ganesh Prasad, Advocate

For the workman : Shri S. C. Gour, Advocate

State : Jharkhand Industry : Coal

Dated 04/05/ 2017

AWARD

By order No. L-20012 /79 /2009/ IR (C-I) dt. 30.11.2009 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Hurriladih Colliery under Kustore Area of M/S BCCL in dismissing Shri Kailash Dhari, M/Loader from the services of company w.e.f. 27.01.2005 is justified and legal? (ii) To what relief is the workman concerned entitled?”

2. This Case is received from the Ministry on 16.12.2009. During the pendency of the case concerned workman has died. Thereafter Ld.Counsel for the concerned workman submits that , he does not want to file any substitution petition and to withdraw this reference case. It is felt that the dispute between parties is resolved in the meantime. Hence “No dispute” award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1477.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बोसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 53/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/88/2011-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1477.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 53 of 2011) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 05.06.2017.

[No. L-20012/88/2011-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 53/2011

Employer in relation to the management of Kusunda Area of M/s. BCCL

AND

Their workman

Present : Shri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri Pintu Mondal, Rep.

State : Jharkhand

Industry : Coal

Dated 08/05/2017

AWARD

By order No. L-20012/88/2011-IR (C-1) dated 24/11/2011, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Kusunda Colliery of M/s. B.C.C.L in not providing monetary compensation to Smt. Manmati Devi wife Late Bigan Ram under the provision of NCWA is fair and justified ? To what relief Smt. Manmati Devi of Late Bigan Ram is entitled to?”

2. The case is received from the Ministry of Labour on 12.12.2011. After receipt of reference, both Parties are noticed, After long delay the sponsoring Union/workman files their written statement on 30.12.2015. The management also files their written statement-cum-rejoinder on 19.05.2016. No evidence adduced by either side, and no documents of either side is marked.

3. The case of the workman is that Smt. Manmati Devi is legally married wife of Late Bigan Ram who was permanent employee of Kusunda Colliery of M/S BCCL , working as Fan Operator has died on 13.08.2004 while in service. At the time of the death of Late Bigan Ram his wife smt Manmati Devi was aged about 53 years. After the death of deceased employee, his wife applied for monetary compensation but the management has not been considered her application. Accordingly Smt Manmati Devi is entitled to receive monetary compensation from the date of death of her deceased husband i.e 23.08.2004 till the age of 60 years.

4. The case of the management is that Late Bigan Ram was an employee of Kusunda Colliery. He died on 23.08.2004 and thereafter no body claimed for dependant employment and applied for monetary compensation in lieu of employment as per NCWA provision. After the expiry of several years the sponsoring Union raised present industrial dispute without any supporting document to prove that applicant Manmati Devi is legally wedded wife of the deceased employee.

5. The present reference is as to whether the deceased workman's dependant wife is entitled to monetary compensation or not?. The applicant in its written statement , stated that her husband died , while in service and as per NCWA she is entitled to monetary compensation, but neither she nor her children claim for job through compassionate appointment scheme, which is also an alternative remedy under NCWA.

6. On the other hand the management dispute the identity of the applicant and submits no application for monetary compensation filed for which is was not paid anything. But the applicant files document to show that she applied for job.

7. In the present case, without computing the monetary compensation it is felt that the management is directed to pay a sum of Rs. 80,000/- to the applicant in shape of A/c payee cheque or Bank draft within 3 months. The reference is answered.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1478.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 20/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/41/2015-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1478.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 20 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 05.06.2017.

[No. L-20012/41/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 20/2015

Employer in relation to the management of P.B. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri S.N. Ghosh, Advocate

For the workman : Shri R.R. Ram, Rep.

State : Jharkhand

Industry : Coal

Dated 04/05/2017

AWARD

By order No. L-20012 /41 /2015/IR (C-I) dt. 09.06.2015, the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bhagabandh Colliery of M/s. BCCL in not paying 13 days advance pay to Sri Gyan Chand Paswan, Ex- Blacksmith is fair and justified? To what relief the concerned workman is entitled to?”

2. The case is received from Ministry of Labour on 15.06.2015. The workman files their written statement on 03.07.2015. After long delay, the management files their written statement on 06.01.2017. Thereafter rejoinder and document filed by the parties. No witness examined from both side and no documents also marked from either side.

3. The case of the workman is that the concerned workman was a permanent workman in Bhagabandh Colliery under P.B.Area of M/s. BCCL, who has retired from service on 31.08.2013 on attaining the age 60 years.

4. It is further submitted by the workman that the management paid him monthly salary from 21st July to 16th August whereas the concerned workman retired from his service on 31.08.2013 thus from the date of 17th Sugust to 30th August , i.e 13 days monthly salary is due with the management, hence the concerned workman is entitled to get his 13 days wages from the management.

5. On the other hand the case of the management is that the concerned workman was permanent workman of Bhagabandh colliery and retired from his service on 31.08.2013 on attaining the age of 60 years.

6. It is further submitted by the management that the workman himself filed a pay slip vide list of document dated 11/11/16 , It is crystal clear that the workman was paid salary for the period 01 August to 31 August 2013 as per pay slip of August 2013 which is signed by the workman as such there remains no question as to non-payment of salary from 17th August to 30th August 2013 by the management.

7. It appears from the pay slip that the management had paid full month salary up to 31st August 2013 without making any deduction of 13 days advance pay made to the workman as it appears in the schedule and therefore the workman is enjoying 13 days extra payment which is subject to deduction from any such payment which is due with the management or the management is at liberty to realise such advance payment in accordance with law.

8. The short point is decided in this reference is as to whether the 13 days payment is due with management or not?. Workman says that he has received the salary from 21 July to 16th August hence the 13 days salary is due with the management but the management resisted the claim saying all dues i.e salary etc of the workman has been paid to him.

9. But from the pay slip and Bank A/C of the workman it appears, the last month job before superannuation salary of 1st August to 31st August has been paid to him vide A/C 470610100005959 of the workman. Hence he is not entitled to get any thing from the management.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1479.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 49/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/107/2015-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1479.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1,

Dhanbad (Ref. No. 49 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 05.06.2017.

[No. L-20012/107/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 49/2015

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri Manas Chatterjee, Rep.

State : Jharkhand

Industry : Coal

Dated 04/05/2017

AWARD

By order No. L-20012/107/2015-IR(CM-1) dated 09/10/2015, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDEULE

“Whether the action of the management of Tetulmari Colliery under Sijua Area of M/s BCCL in not providing employment to Smt. Kokila Devi, dependent wife of Late Amrit Bouri on compassionate ground under the provisions of NCWA is fair and justified? To what relief Smt. Kokila Devi is entitled to?”

2. This Case is received from the Ministry on 02.11.2015. The Sponsoring Union files written statement on 08.12.15 and the management also files written statement-cum-rejoinder on 02.03.2017. During the pendency of the case representative of the Sponsoring Union and the workman concerned appear and file a petition and submit that they do not want to pursue the reference and want to withdraw the same. They are permitted to withdraw the same. It is felt that dispute between them might be resolved in the meantime. Hence pass an award of No. Dispute accordingly.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1480.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 33/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार का 05.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/34/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1480.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 33 of 2013) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 05.06.2017.

[No. L-20012/34/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 33/2013

Employer in relation to the management of Sinidih Excavation Workshop M/s. BCCL

AND

Their workman

Present : Shri Rajan Kumar Saran, Presiding Officer**Appearances :**

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri B.B. Pandey, Advocate

State : Jharkhand

Industry : Coal

Dated 08/05/2017

AWARD

By order No. L-20012/34/2013-IR (C-I) dated 22/08/2013, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Sinidih Excavation Workshop M/s. BCCL in not paying the wages for the period fro, 09.08.2011 to 28.09.2011 to Shri Dudheshwar Ram is legal and justified? To what relief is the workman concerned entitled to?”

2. The case is received from the Ministry of Labour on 04.09.2013. After receipt of reference, both Parties are noticed, The workman files their written statement on 01.11.2013. After long delay the management also files their written statement-cum-rejoinder on 23.12.2014. No witness adduced by either side. Documents of the workman is marked as W-1 to W- 08.

3. The case of the workman is that the workman was suffering from disease and he was under medical treatment in Central Hospital, Dhanbad from 03.01.2011. The concerned workman was referred to SGPGI, Lucknow for treatment since 15.02.2011 and lastly he was treated at Astik Gas & Endoscopy Centre, Patna w.e.f 09.05.2011 to 31.07.2011 for better treatment. Thereafter being fully cured approached the management with his application alongwith fitness certificate of BCCL Area Medical Officer alongwith Astik Gas & Endoscopy Centre, Patna.

4. The area CGM/GM/HCD are empowered for allowing him to join duty within 3 days from the date of reporting in case of absenteeism for more than 2 months and upto 6 months as per long absenteeism office order No. CND/TS/F-9/195 dated 20/21-01.2010 the case of concerned workman was referred to GM(Excav) Koyla Bhawan for approval since his absence was for more than 3 months. Hence the concerned workman was absent from his duty from 08.05.2011 to 08.08.2011 (91 days) in all on the ground of sickness and undergoing medical treatment for the same .

5. He reported for joining his duty on 09.08.2011 alongwith medical fitness certificate etc. and he could be allowed on 29.09.2011 only thus forced to remain idle for 51 days for no fault on the part of the concerned workman. The concerned workman is entitled to the wages and consequential benefits for the said idle period.

6. On the other hand the case of the management is that the concerned workman is an employee of BCCL working as a fitter in sinidih Excavation workshop. He is appointed on 31.05.1986 and his date of Birth is 20.12.1955.

7. The concerned workman was suffering from illness since 03.01.2011 and he was under treatment at Central Hospital, Dhanbad. He was referred to SGPGI , Lucknow by CH Dhanbad for his treatment. He came to Excavation workshop sinidih on 11.08.2011 without any fitness certificate and requested to allow him on duty. His case was referred to General Manager (Excavation) Koyla Bhawan for approval since his absence was more than 3 months.

8. It is further submitted by the management that it is necessary to declare him fit for duty by the treating Medical Officer of central Hospital Dhanbad before allowing him to resume duty and the medical Board to declare him fit to join his duty and was allowed to join his duty w.e.f 29.09.2011. Sri Dudheshwar Ram did not work from 09.08.2011 to 28.09.2011 as such he is not entitled for wages for this period.

9. Short point to be decided in this reference is, whether the concerned workman will get wage for the period from 09.08.2011 to 28.09.2011 or not. Admitted the workman was ill and was admitted in Central Hospital, Dhanbad which is management's Hospital. Said Hospital referred the patient workman to other specialist hospital, where he was treated but the management did not pay him wage.

10. During that period on the theory of "no work no pay" the workman is not get wage. But from the management witness chief it appears that as the workman did not file papers after joining, his salary was stopped. The point is ailment of workman in coal industries is usual as the work is hazardous for that certain beneficial provision is there.

11. Considering the facts and circumstances of this case, I hold that the management is directed to pay the wage as per Rule. If proper paper could be filed by the workman, the wage be paid treating absence, as any type of leave i.e medical leave or earned leave.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 जून, 2017

का.आ. 1481.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 32/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/721/1997-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th June, 2017

S.O. 1481.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 32 of 1998) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 05.06.2017.

[No. L-20012/721/1997-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 32 of 1998

Employer in relation to the management of Koyla Bhawan of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances :

For the Employers : Shri Naresh Prasad, Sr. Legal Inspector

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 03/05/2017

AWARD

By order No. L-20012 /721 /97/IR (C-I) dated 30.06.1998, the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Union for the employment of land losers as per the enclosed annexure by the management of BCCL is justified ? If so, to what relief are these persons entitled?”

Note :- list of workmen is not enclosed with order of reference.

2. This Case is received from the Ministry on 23.07.1998. After receipt of the reference, both parties are noticed. The workman files written statement on 28.08.98. During hearing of the case, The management challenged the reference before the Hon'ble High Court Ranchi. The Hon'ble High Court quashed the reference dated 30.06.98 in LPA No 412/2002 vide order dated 25/08/2003. Hence intimate the Ministry through an award. Accordingly Award passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1482.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसरस राजस्थान राज्य टंगस्टन माइंस विकास निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या सी.आई.टी. 09/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-29011/19/1994-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th June, 2017

S.O. 1482.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. C.I.T. 09/1995) of the Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rajasthan State Tungsten Development Corporation Ltd. and their workman, which was received by the Central Government on 14.06.2017.

[No. L-29011/19/1994-IR (M)]

RAJESH KUMAR, Under Secy.

अनुबंध

न्यायाधीश, केन्द्रीय ओद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 09 / 1995

सी.आई.एस. 28 / 14

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र० एल.-29011/19/94-आईआर.(विविध) दि. 21.02.1995

अध्यक्ष, टंगस्टन माइंस मजदूर संघ, डेगाना।

....प्रार्थी

बनाम

डाइरेक्टर इंचार्ज, राजस्थान राज्य टंगस्टन माइंस विकास निगम लिमिटेड, जयपुर।

....अप्रार्थी

पीठासीन अधिकारी : गिरीश कुमार शर्मा, आर.एच.जे.एस.

उपस्थित

प्रार्थी की ओर से विद्वान प्रतिनिधि श्री एम०एफ० बैग।

अप्रार्थी की ओर से कोई उपस्थित नहीं।

दिनांक : 17.04.2017

अवार्ड

केन्द्र सरकार, श्रम मंत्रालय नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को अधिनिर्णय हेतु निर्देशित किया है:-

"Whether the action of the management of Rajasthan State Tunguston Development Corporation, Jaipur in not treating the services of the following workman as continuous service with back wages, allowance and other benefits for the period mentioned against their names is Legal and Justified? If not to what relief the workman are entitled to?

S.No.	Name of workman	Period from	Period to
1-	Shri Choga/Mangu	10.07.87	3.6.1991
2-	Shri Hira/Mehram	14.06.87	3.6.1991
3-	Shri Purna/Pancha	14.06.87	3.6.1991
4-	Shri Kishna /Arja	14.06.87	3.6.1991
5-	Shri Bhanwara/kana	10-10-85	3.6.1991
6-	Shri Kishna/ Jora	14-6-87	3.6.1991
7-	Shri Chunnilal /Mangu	7-9-87	3.6.1991

प्रकरण दर्ज रजिस्टर किया जाकर उभय पक्षकारान को नोटिस जारी किए गए। प्रार्थी यूनियन की ओर से दिनांक 07.05.1997 को स्टेटमेंट ऑफ कलेम पेश कर अभिकथन किया गया कि सर्वश्री छोगा, हीरा पुत्र मेहराम, पूरण पुत्र पांचा, किशना पुत्र अरजा, भंवरा पुत्र काना एवं श्री किशना पुत्र जोरा तथा चुन्नीलाल पुत्र मांगु अप्रार्थी प्रबंधक के अधीन एवं नियंत्रण में अपनी नियुक्ति तिथि से कार्यरत है। अप्रार्थी एवं हिन्दुस्तान जिंक लिमिटेड जयपुर के साथ दिनांक 13.01.1991 को एक एग्रीमेंट कर श्रमिकगण की सेवाएंस्थानांतरित कर दी गई जबकि श्रमिकगण को इस संबंध में कोई सूचना नहीं दी गयी। प्रार्थी यूनियन द्वारा दिनांक 11.9.91 को अप्रार्थी प्रबंधक को श्रमिकों व आरएसटीडीसी डेंगाना के प्रबंधकों के मध्य श्रमिकों के पद को लेकर विवाद उत्पन्न होने बाबत् लिखा गया था। दिनांक 17.9.91 को अप्रार्थी प्रबंधक द्वारा श्रमिकों की सेवायें दिनांक 4.6.91 से समाप्त कर दी। जिसका विवाद उठाये जाने पर एक समझौते के तहत श्रमिकगण की सेवाएं निरन्तर मानी गयी लेकिन विवादग्रस्त अवधि का वेतन का विवाद केन्द्र सरकार को भेजा गया। श्रमिकगण विवादग्रस्त अवधि में अपने कार्य स्तर पर जाते थे और उन्हें दिनभर टाइम आफिस में बैठाये रखते थे। विवादग्रस्त श्रमिकों के विरुद्ध कोई जांच कार्यवाही नहीं की और न ही कोई निर्वाह भत्ता और न ही वेतन दिया गया। जो अनफेयर लेबर प्रेविटस है। अतः अन्त में विवादग्रस्त श्रमिकों को उपरोक्त वर्णित अवधि का वेतन भत्ते व अन्य लाभ दिलाये जाने का निवेदन किया है।

विपक्षी संस्थान द्वारा स्टेटमेंट ऑफ कलेम जवाब प्रस्तुत कर अभिकथन किया कि संबंधित श्रमिक विवादास्पद अवधि में बगैर अनुमति के स्वेच्छा से निरन्तर अनुपस्थित रहे। दिनांक 4.6.1991 से उक्त श्रमिकों की सेवाएं केन्द्रीय उपकरण में हिन्दुस्तान जिंक लिमिटेड में स्थानांतर कर दी गई। संबंधित श्रमिकगण द्वारा कार्य पर अपनी उपस्थित नहीं देने पर औद्योगिक विवाद अधिनियम की धारा 25 एफ की पालना कर इनकी सेवायें समाप्त कर क्षतिपूर्ति राशि के चैक भेजे गये। श्रमिक श्री छोगा/मांगु/सुंदरी/दयाल ने सेवामुक्ति स्वीकार कर क्षतिपूर्ति की राशि भी प्राप्त कर ली है। श्रमिक श्री छोगा व चुन्नीलाल की सेवामुक्ति के विवाद में प्रार्थी यूनियन ने कोई विवाद नहीं अवार्ड प्राप्त कर लिया है। श्रमिकगण द्वारा प्राधिकारी अन्तर्गत वेतन भुगतान अधिनियम बीकानेर के समक्ष वेतन भुगतान के दावे स्वीकार किये जाने पर उक्त प्राधिकारी के आदेश के विरुद्ध माननीय उच्च न्यायालय में याचिका पेश करने पर माननीय उच्च न्यायालय के आदेश की पालना में श्रमिकों को राशि का भुगतान किया जा चुका है। श्रमिकगण विवादित अवधि में निरन्तर अनुपस्थित रहे हैं तथा श्रमिकों को टाइम आफिस में बैठाये जाने के कथन से इंकार किया है। अन्त में प्रार्थी यूनियन द्वारा प्रस्तुत कलेम खारिज किए जाने की प्रार्थना की है।

प्रार्थी की ओर से साक्ष्य में प्रार्थी साक्षी किशना पुत्र अरजा, प्रार्थी साक्षी छोगा व प्रार्थी साक्षी किशना पुत्र जोरा व प्रार्थी साक्षी भंवरा व प्रार्थी साक्षी हीरा को न्यायाधिकरण में परीक्षित करवाए हैं तथा विपक्षी को पर्याप्त अवसर साक्ष्य में दिए जाने के पश्चात् भी कोई साक्षी परीक्षित नहीं करवाया गया है तथा आदेश पत्री दिनांक 11.03.2005 से विपक्षी साक्ष्य बंद की गई है।

प्रार्थी के विद्वान प्रतिनिधि ने लिखित बहस अंतिम प्रस्तुत की है। विपक्षी की ओर से कोई लिखित बहस का जवाब पेश नहीं हुआ है तथा गत कई पेशी से अनुपस्थिति हो रही है।

मैंने लिखित बहस पर मनन किया व अभिलेख का परिशीलन किया।

अब न्यायाधिकरण के समक्ष अवधारणीय बिन्दु यह है कि क्या कर्मकार रेफरेंस में वर्णित अवधि का बैक वेजेज पाने के हकदार हैं।

इस संबंध में प्रार्थी साक्षी किशना पुत्र अरजा ने अपनी साक्ष्य में बताया है कि अप्रार्थी ने उसको दिनांक 14.6.1987 से दिनांक 3.6.1989 के मध्य की अवधि का वेतन भत्ता अन्य सेवालाभ नहीं दिया है तथा उसे विपक्षी टाइम आफिस में बिठाए रखते थे तथा उक्त अवधि का वेतनलाभ में से आधा बीकानेर वेतन भुगतान प्राधिकारी के समक्ष केस किया जिसमें प्रार्थी को सफलता मिली थी। फिर अप्रार्थी ने माननीय उच्च न्यायालय में उस आदेश के विरुद्ध गए तो माननीय उच्च न्यायालय ने यह फरमाते हुए मामला निस्तारित कर दिया कि

औद्योगिक न्यायाधिकरण में के स चल रहा है तथा प्रार्थी की कोई छंटनी भी नहीं की गई है तथा न ही छंटनी का कोई मुआवजा दिया गया है। जिरह में इस गवाह ने अभिकथन किया है कि वह चौकीदारी का कार्य करता था तथा जिरह में इस गवाह ने आधा वेतन लाभ मिलना स्वीकारा है तथा इस गवाह ने इस सुझाव से इंकार किया है कि उसे छंटनी के आधार पर हटाया हो और उसने दिनांक 14.6.1987 से दिनांक 3.6.1991 तक काम करने से मना किया हो।

प्रार्थी किशना पुत्र जोरा ने भी साक्ष्य में बताया है कि विपक्षी संस्थान में वह चौकीदार के पद पर कार्यरत था तथा उसको दिनांक 14.6.1987 से दिनांक 3.6.1991 की अवधि का वेतन एलाउंस सेवा लाभ नहीं दिया। जिरह में इस गवाह ने सुझाव से इंकार किया है कि उसने दिनांक 14.6.1987 से दिनांक 3.6.1991 तक कार्य ड्यूटी न दी हो बल्कि साईट पर जाना व कार्य न देने के बारे में परिसाक्ष्य दी है तथा भुगतान प्राधिकारी के आदेश से आधा वेतन लाभ दिया जाना बताया है।

प्रार्थी साक्षी भंवर ने अपनी साक्ष्य में बताया है कि वह कैटीन हैल्पर था तथा वह अर्द्धकृशल श्रमिक था तथा उसको दिनांक 10.10.1985 से दिनांक 3.6.1991 तक का वेतन लाभ नहीं दिया। फिर वेतन भुगतान प्राधिकारी के आदेश से आधा वेतन लाभ दिया गया है तथा इस अवधि में मेट द्वारा कार्य नहीं देना बताया है लेकिन उसके द्वारा टाईम आफिस में ड्यूटी देना बताया है।

प्रार्थी साक्षी हीरा ने अपनी साक्ष्य में बताया है कि वह विपक्षी संस्थान में चौकीदार का कार्य करता था तथा उसको दिनांक 14.6.1987 से दिनांक 3.6.1991 तक का वेतन लाभ नहीं दिया फिर वेतन भुगतान प्राधिकारी के आदेश से आधा वेतन लाभ दे दिया जाना बताया है तथा उसकी सेवा दिनांक 4.6.1991 को समाप्त कर दी। उसके बाद यूनियन ने दिनांक 11.11.91 को सेवामुक्ति का विवाद उठाया तो समझौता हुआ। उसके फलस्वरूप श्रमिकों को काम पर ले लिया था तथा वह रिटायर हो गया है तथा उसने टाईम आफिस में ड्यूटी दी है।

प्रार्थी के विद्वान प्रतिनिधि ने बहस की कि श्रमिक छोगा को क्षतिपूर्ति राशि मिल चुकी है तथा उसने अपना हक परित्याग कर दिया है तथा बाकी श्रमिकों को कोई वेतनलाभ या क्षतिपूर्ति राशि नहीं मिली है जबकि समझौता के अधीन उनकी सेवाएं नियमित मानने का हुआ था। अतः उनको देय वेतन लाभ बैक वेजेज उक्त अवधि की विपक्षी संस्थान जो वर्तमान में हिन्दुस्तान जिंक लिमिटेड है उससे दिलाया जावे।

मैंने बहस पर मनन किया व पत्रावली पर आई साक्ष्य का विवेचन के फलस्वरूप न्यायाधिकरण का विनम्र मत यह है कि प्रार्थी श्रमिक टर्म्स ऑफ रेफरेंस में क्रमांक 2 हीरा व क्रमांक 4 श्री किशना पुत्र अरजा व क्रमांक 5 श्री भंवरा व क्रमांक 6 में श्री किशना पुत्र जोरा की साक्ष्य से यह आया है कि उन्होंने क्रमशः दिनांक 14.6.1987 से 3.6.1989 व दिनांक 14.6.1987 से दिनांक 3.6.1991, दिनांक 10.10.1985 से दिनांक 3.6.1991 व दिनांक 14.6.1987 से दिनांक 3.6.1991 की समयावधि की बैक वेजेज में से आधा भुगतान ही किया गया है तथा इन गवाहान के प्रतिपरीक्षण से इस अवधि में ये प्रार्थीगण विपक्षी संस्थान के कर्मकार न रहे हो ऐसी कोई साक्ष्य परिस्थिति नहीं आयी है तथा इन्हें उक्त अवधि की सेवा निरन्तर न मानने का भी अभिलेख पर कोई आधार नहीं है इसलिए इन चारों कर्मकारों को सेवावधि का विपक्षी संस्थान द्वारा वेतन लाभ न दिया जाना वैध व न्यायोचित नहीं है तथा वेतन भुगतान प्राधिकारी के आदेश से विपक्षी संस्थान द्वारा आधा वेतन लाभ दिया जाना इस अभिसाक्षीगण की साक्ष्य से परिलक्षित है। अतः शेष बकाया बैक वेजेज उक्त अवधि का ये कर्मकार श्री हीरा पुत्र मेहराम व किशना पुत्र अरजा व श्री भंवरा व श्री किशना पुत्र जोरा विपक्षी संस्थान वर्तमान में हिन्दुस्तान जिंक लिमिटेड से पाने के मुश्तहक है तथा अन्य श्रमिक छोगा के संबंध में विद्वान प्रतिनिधि ने दौराने बहस यह जाहिर किया है कि उसको क्षतिपूर्ति राशि का बैक मिल चुका है, बाकी हक त्याग कर दिया है तथा श्रमिक पूर्णा व चुनीलाल की ओर से स्टेटमेंट ऑफ क्लेम के समर्थन में कोई साक्ष्य न होने से उनका स्टेटमेंट ऑफ क्लेम अस्वीकार किए जाने योग्य होने से नो डिस्प्युट में किया जाता है। अतः उपरोक्त विवेचन के फलस्वरूप इस रेफरेंस का उत्तर निम्न प्रकार देते हुए निम्न अधिनिर्णय पारित किया जाता है:-

अधिनिर्णय

अतः 'राजस्थान राज्य टंगस्टन विकास कारपोरेशन प्रबंधन जयपुर के द्वारा कर्मकार श्री हीरा पुत्र मेहराम का दिनांक 14.6.1987 से दिनांक 3.6.1991 तक की अवधि का एवं श्री किशना पुत्र अरजा का दिनांक 14.6.1987 से दिनांक 3.6.1989 तक की अवधि का एवं श्री भंवरा पुत्र काना का दिनांक 10.10.1985 से दिनांक 3.6.1991 तक की अवधि का एवं श्री किशना पुत्र जोरा का दिनांक 14.6.1987 से दिनांक 3.6.1991 तक की अवधि का उक्त श्रमिकगण की विपक्षी संस्थान में लगातार सेवा में न मानने से बैक वेजेज व अन्य परिलाभ न दिया जाना विधिसम्मत व न्यायोचित नहीं है तथा इन श्रमिकगण का उपरोक्तानुसार बकाया शेष वेतन परिलाभ विपक्षी संस्थान से पाने के हकदार हैं जो विपक्षी संस्थान अधिनिर्णय की तिथि से तीन माह में इन्हें संदाय करें अन्यथा उपरोक्त हर कर्मकार बकाया शेष वेतनलाभ पर अवार्ड की तिथि से 12 प्रतिशत वार्षिक ब्याज दर से वसूलयाबी तक पाने के मुश्तहक है तथा कर्मकार सर्वश्री छोगा पुत्र मागू व पूरण पुत्र पन्था व चुनीलाल पुत्र मांगू का क्लेम नो डिस्प्युट में खारिज किया जाता है तथा मामले के तथ्य एवं परिस्थिति में पक्षकारान् खर्च अपना—अपना स्वयं वहन करेंगे।

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 16 जून, 2017

का.आ.1483.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स उड़ीसा सीमेंट लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या सी.आई.टी. 01/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-29011/40/1989-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th June, 2017

S.O. 1483.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. C.I.T. 01/1992) of the Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Orissa Cement Limited and others and their workman, which was received by the Central Government on 14.06.2017.

[No. L-29011/40/1989-IR (M)]

RAJESH KUMAR, Under Secy.

अनुबंध

न्यायाधीश, केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 01 / 1992

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र० एल-29011/40/89-आईआर.(विविध) दि. 1.1.1992

खदान मजदूर यूनियन, कोलायत, बीकानेर

....प्रार्थी

बनाम

1. मै० उड़ीसा सीमेंट लि०, इन्दोक वाला फायर वाले माइंस, पो० कोलायत, बीकानेर।
2. मै० उम्मेद सिंह राठौड़, पुरानी गिन्नानी, बीकानेर।
3. मै० कन्स्ट्रक्शन इंजीनियर, कोर्ट के अंदर, बीकानेर।
4. मै० तिलकत्सा चेन्दाना, रथखाना कॉलोनी, बीकानेर।
5. मै० राज० मिनरल्स, 99–100, औद्योगिक क्षेत्र, बीकानेर।
6. मै० प्रेम मिनरल्स कॉरपोरेशन, औद्योगिक क्षेत्र, महावीर ऑयल मिल के सामने, बीकानेर।
7. मै० सीताराम रात्र कुमार, हमलोन की वारी, वारावडोर, बीकानेर।
8. मै० बालाजी वलास्टर्स एण्ड जनरल इण्डस्ट्री, मनोहर भवन संघ कार्यालय के सामने, रानी बाजार, बीकानेर।
9. मै० गोपाल कृष्ण मनोहर भवन, राणी बाजार, बीकानेर।
10. मै० साबित्री देवी, पुरोहित, मार्फत सुरेन्द्र सिंह वैद, राणी बाजार, बीकानेर।
11. मै० वी.के. सिघवी, पुरानी औद्योगिक क्षेत्र, राणी बाजार, बीकानेर।
12. मै० भैवर सेल्स कॉरपोरेशन, राणी बाजार, बीकानेर।
13. मै० डांगा मिनरल्स, बाजारी मौहल्ला, बीकानेर।
14. मै० भूदेव मिनरल्स, पो० रोलायतजी, बीकानेर।
15. मै० शिव भगवान शर्मा, पो० कोलायत जी, बीकानेर।
16. मै० शारदा सेल्स कॉरपोरेशन, बछावती का मौहल्ला बड़ा बाजार, बीकानेर।
17. मै० शिव रतन एण्ड ज्वाला प्रसाद, बछावती का मौहल्ला, बड़ा बाजार, बीकानेर।
18. मै० द्रोपदी सेल्स कारपोरेशन, बछावती का मौहल्ला, बड़ा बाजार, बीकानेर।
19. मै० हनुमान वाद सिंघानिया, बछावतों का मौहल्ला, बड़ा बाजार, बीकानेर।

20. मै0 हरीश कले, श्री गंगा थियेटर, पब्लिक पार्क, बीकानेर।
21. मै0 मूल चंद बोत्तरा, रंगारी चौक, बीकानेर।
22. मै0 उड़ीसा इण्डस्ट्रीज लि0, पो0 गगनेर, बीकानेर।
23. मै0 राज मिलरल्स विछावत औद्योगिक क्षेत्र, बीकानेर।
24. मै0 जी.एस. इण्डस्ट्रीज, जे. 22, विछावत औद्योगिक क्षेत्र, बीकानेर।

...अप्रार्थीगण

उपस्थित

पीठासीन अधिकारी: श्री गिरीश कुमार शर्मा, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री कुणाल रावत
 अप्रार्थीगण की ओर से : कोई उपस्थित नहीं।

दिनांक अवार्ड : 04.01.2017

अवार्ड

भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल-29011/40/89—आई.आर.(विविध) दिनांक 1.1.1997 से निम्न अनुसूची का विवाद “Whether the workers of clay mines employed by various employers are justified is demanding categorywise pay scales with provisions for annual increments equal to 10 percent of their wages? If some what should be the scales of pay for each category of workers with quantum of annual increments and their incidental relief, banefits: if any?”

“Whether the demand of workers of Kolayatji area in the district of Bikaner for grant of 12 paid National/Festival holidays in a year is justified? If so which are to be the 12 national/festival holidays?”
 अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

प्रार्थी यूनियन की ओर से स्टेटमेंट ऑफ क्लेम पेश कर अभिकथन किया है कि प्रार्थी यूनियन एक रजिस्टर्ड यूनियन है, जो कि कोलायत क्षेत्र के विभिन्न खदानों में कार्य करने वाले श्रमिकों का प्रतिनिधित्व करती है। अप्रार्थी संस्थान अपने—अपने खदानों से अच्छा लाभ कमाने के बाद भी श्रमिक अपने काम के अनुरूप वेतन प्राप्त करने के अधिकार से वंचित है। श्रमिक न्यूनतम वेतन के अधिकार से वंचित है। जिसके लिये एक 22 सूत्रीय मांग पत्र दिनांक 26.09.88 को विभिन्न खान—प्रबंधकों एवं संस्थानों को प्रेषित किया। मांग पत्र में अधिकांश मांगें विभिन्न श्रम नियमों के पालन कराने संबंधित थीं। दिनांक 02.05.89 को क्षेत्रीय श्रम आयुक्त (केन्द्रीय) के समक्ष वार्ता में मांग संख्या 7ए 8ए 10ए 11ए 13ए 15ए 17 व 18 को आपसी वार्ता के लिये चुना गया और बाकी मांगे कानून संगत एवं श्रम कानूनों के पालन से संबंधित माना गया। तदुपरांत दिनांक 31.05.89 को अप्रार्थी संस्थान की ओर से कोई संतोषप्रद जवाब नहीं देने और उपस्थित नहीं होने के कारण समझौता कार्यवाही एकतरफा करने का निर्णय लिया गया और प्रार्थी यूनियन को समझौता वार्ता में ली गई मांगों के संबंध में विस्तृत औचित्य प्रस्तुत करने के निर्देश दिये गये। क्षेत्रीय श्रम आयुक्त (केन्द्रीय) द्वारा कोलायत के सभी खदानों के श्रमिकों के मांग पत्र पर एक तरफा कार्यवाही करने के उपरांत पुनः 13 जून 89 के पत्र द्वारा दिनांक 6 जुलाई 1989 को पुनः वार्ता के लिये बुलाया गया। पुनः वार्ता के उपरांत भी अप्रार्थी संस्थानों द्वारा कोई रुचि न लेने के कारण समझौता असफल हो गया। केन्द्र सरकार द्वारा मांग पत्र में से दो मांगों को न्यायाधिकरण के समक्ष प्रेषित किया है।

विभिन्न खदानों के श्रमिकों को केन्द्रीय सरकार द्वारा असंगठित श्रमिकों के लिये निर्धारित न्यूनतम वेतन दिया जाता है। कई खदानों में न्यूनतम वेतन का लाभ भी नहीं दिया जाता है। वर्षों से कार्यरत श्रमिकों को वार्षिक वेतन वृद्धि का लाभ नहीं दिया जाता है। खदानों में अकुशल, कुशल, अर्द्धकुशल श्रमिकों को उनके कार्य के अनुरूप वेतन नहीं दिया जाता है। कोलायत क्षेत्र में सड़कों पर मिट्टी डालने, भवन निर्माण उद्योग में कार्य करने वाले, अन्य अनुसूचित उद्योगों में काम करने वाले अकुशल कामगारों को 1990 से 22/-रु0 न्यूनतम वेतन तथा विवाद से संबंधित श्रमिकों को 15/-रु0 न्यूनतम वेतन दिया जाता है। सभी खदान मालिक खनिज से अच्छा लाभ कमाते हैं अतः प्रार्थी यूनियन की प्रथम मांग श्रमिकों के कार्य अनुरूप वेतन व 10 प्रतिशत वेतन के बराबर वार्षिक वेतन वृद्धि की मांग उचित है।

खदानों के श्रमिकों को किसी भी प्रकार का सवैतनिक अवकाश दिया जाता है जबकि अन्य संस्थानों और उद्योगों में सवैतनिक वार्षिक अवकाश, आकस्मिक अवकाश तथा राष्ट्रीय त्योहारों का सवैतनिक अवकाश दिये जाते हैं। राज्य में राज0 दुकान एवं वार्षितय संस्थान अधिरो के तहत दुकानों में काम करने वाले श्रमिकों को भी 30 दिन के सवैतनिक अवकाश दिया जाता है। अतः श्रमिकों की प्रतिवर्ष राष्ट्रीय एवं त्योहारों की 12 सवैतनिक आकस्मिक अवकाश की मांग उचित एवं वैध है। अतः प्रार्थी यूनियन का स्टेटमेंट ऑफ क्लेम स्वीकार कर उक्त दोनों मांगों को उचित एवं वैध मानते हुये यूनियन के पक्ष में अवार्ड किये जाने का निवेदन किया है।

विपक्षीगण की ओर से उन पर सम्यक तामील होने के पश्चात् भी प्रार्थी संघ के स्टेटमेंट ऑफ क्लेम का कोई खण्डन करने के लिये उपस्थित नहीं हुये हैं तथा प्रार्थी संघ की ओर से खदान मजदूर संघ के महामंत्री डी.के. छंगानी ने अपनी साक्ष्य शपथ पत्र पर प्रस्तुत की है।

पत्रावली का अवलोकन किया व बहस सुनी गई।

सर्वप्रथम न्यायाधिकरण के समक्ष अवधारणीय बिन्दु यह है कि क्या खान में जो कर्मकार नियुक्त है उनकी मजदूरी एक वेतनमान व 10 प्रतिशत मजदूरी की वार्षिक वेतन वृद्धि विभिन्न श्रेणी के मजदूर का वेतनमान निर्धारित होना चाहिए?

इस संबंध में प्रार्थी की ओर से आई साक्ष्य में किस श्रेणी के कर्मकार का क्या वेतनमान होना चाहिए, ऐसी कोई साक्ष्य सामग्री अभिलेख पर नहीं आई है लेकिन न्यूनतम मजदूरी केन्द्रीय सरकार द्वारा निर्धारित भी अकुशल श्रमिक, कुशल श्रमिक व अर्द्धकुशल श्रमिक को विपक्षीगण द्वारा नहीं दिया जाना आया है। इस संबंध में न्यायाधिकरण का विनम्र मत यह है कि खदान में कार्य करने वाले अकुशल श्रमिक, अर्द्धकुशल श्रमिक व कुशल श्रमिक को न्यूनतम मजदूरी अधिनियम के तहत केन्द्रीय या राज्य सरकार द्वारा निर्धारित मजदूरी दी जानी चाहिए तथा प्रत्येक खान नियोक्ता को इन कर्मकारों के लिये स्थायी आदेश बनाये जाकर प्रत्येक श्रेणी के खनिक कर्मकार का उपरिथित रजिस्टर व देय मजदूरी का विवरण का रजिस्टर रखना चाहिए जिससे कि प्रत्येक कर्मकार का सेवाअवधि निर्धारण हो सके एवं उसके अनुसार एक वेतनमान का निर्धारण हो सके तथा प्रत्येक श्रमिक को न्यूनतम मजदूरी के हिसाब से मजदूरी की अदायगी की जानी चाहिए तथा कुशल श्रमिक व अर्द्धकुशल श्रमिक का वेतनमान मौजूदा न्यूनतम मजदूरी जो कि केन्द्रीय सरकार द्वारा समय—समय पर निर्धारित की जाती है उसका मासिक गणनफल किया जाकर हर वर्ष 10 प्रतिशत वार्षिक वृद्धि मजदूरी में की जाती है तो कर्मकार के जीवन स्तर में सुधार होगा जो कि संविधान के नीतिनिर्देशक तत्व में रखे गए संवेदानिक प्रावधान की पालना भी हो सकेगी। अतः न्यायाधिकरण के विनम्र मत में खान में नियोजित कर्मकार जो कि अकुशल व अर्द्धकुशल व कुशल वर्ग के हैं, उन्हें केन्द्र सरकार द्वारा न्यूनतम मजदूरी अधिनियम में निर्धारित मजदूरी के अनुसार मजदूरी व उस पर 10 प्रतिशत वार्षिक वेतन वृद्धि पाने के हकदार हैं तथा खान श्रमिकों की जो द्वितीय मांग राष्ट्रीय व पर्व अवकाश के संबंध में है, इसके संबंध में प्रार्थी साक्षी —1 ने 12 अवकाश दिये जाने की परिसाक्ष्य दी है तथा संविधान के अनुच्छेद 43 में भी कर्मकार को अवकाश दिए जाने का नीतिनिर्देशक तत्व में प्रावधान रखा गया है तो राष्ट्रीय एवं पर्व अवकाश कर्मकार के जीवनस्तर के लिए मानवोचित व्यवहार में आवश्यक हैं तथा यह मांग कोई विधि के किसी प्रावधान से असंगत नहीं है इसलिए प्रार्थी व्यवसाय संघ की यह मांग न्यायोचित है तथा जो प्रत्येक कर्मकार को निम्न प्रकार 12 राष्ट्रीय व पर्व अवकाश दिये जाने न्यायोचित है—

1. गणतंत्र दिवस	2. स्वतंत्रता दिवस	3. होली	4. धूलण्डी
5. दीपावली	6. महाशिवरात्रि	7. ईदुलफितर	8. रक्षाबंधन
9. गुरुनानक जयंती	10. ईदुलजुहा	11. मोहर्रम	12. जन्माष्टमी

उपरोक्त विवेचन के फलस्वरूप न्यायाधिकरण के विनम्र मत में निम्न अधिनिर्णय पारित किया जाना उचित है :—

अधिनिर्णय

अतः “अकुशल श्रमिक, अर्द्धकुशल श्रमिक एवं कुशल श्रमिक केन्द्रीय सरकार द्वारा मजदूरी अधिनियम में समय—समय पर निर्धारित न्यूनतम मजदूरी व उस पर 10 प्रतिशत वार्षिक वेतन वृद्धि पाने के हकदार हैं।

कोलायत क्षेत्र के श्रमिकों की 12 राष्ट्रीय व पर्व अवकाश की मांग उचित एवं वैध है। प्रार्थी श्रमिकगण 12 राष्ट्रीय व पर्व अवकाश प्राप्त करने के अधिकारी हैं।”

अधिनिर्णय लिखाया जाकर आज दिनांक 4.01.2017 को सरे इजलास हस्ताक्षर कर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 16 जून, 2017

का.आ. 1484.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या सी.आई.टी. 7/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-43012/10/1996-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th June, 2017

S.O. 1484.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. C.I.T. 7/1997) of the Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Copper Limited and their workman, which was received by the Central Government on 14.06.2017.

[No. L-43012/10/1996-IR (M)]

RAJESH KUMAR, Under Secy.

अनुबंध

न्यायाधीश, केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 07 / 1997

रैफरैस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र० एल.-43012/10/96—आई.आर.(विविध) दि. 21.01.97

खेतड़ी ताम्बा श्रमिक संघ, खेतड़ीनगर, जिला—झुंझुनू

...प्रार्थी

बनाम

हिंदुस्तान कॉपर लिमिटेड, खेतड़ी कॉपर कॉम्प्लेक्स, खेतड़ी नगर, जिला—झुंझुनू।

...अप्रार्थी

पीठासीन अधिकारी : गिरीश कुमार शर्मा, आर.एच.जे.एस.

उपस्थित

प्रार्थी की ओर से : श्री कुणाल रावत

अप्रार्थी की ओर से : कोई उपस्थित नहीं

दिनांक अवार्ड : 13.02.2017

अवार्ड

केन्द्र सरकार, श्रम मंत्रालय नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को अधिनिर्णय हेतु निर्देशित किया है:

“Whether the action of the management of Khetri Copper Complex , Hindustan Copper Ltd- Khetri Nagar, Dist. Jhunjhunu is not promoting Shri P.S. Parmar, Sr. Draftman (Geology) to the post of Asst. Engineer (Design)/Chief Draftman (now renamed as Sr. Geologist (Design) is justified? If not, to what relief the workman is entitled to ?”

प्रकरण दर्ज रजिस्टर किया जाकर उभय पक्षकारान को नोटिस जारी किए गए। प्रार्थी यूनियन की ओर से दिनांक 04.03.1997 को स्टेटमेंट ऑफ क्लेम पेश कर अभिकथन किया गया कि प्रार्थी श्रमिक को पदोन्नति नहीं देने का औचित्य यह सिद्ध करने का भार विपक्षी संस्थान का है। प्रार्थी श्रमिक पी.एस. परमार वर्ष 1964 से विपक्षी संस्थान में कार्यरत है। प्रार्थी श्रमिक दिनांक 14.08.1970 से सीनियर ड्राफ्टमैन (जीओलोजी) के पद पर कार्यरत है। प्रार्थी श्रमिक वर्ष 1975 से प्रार्थी यूनियन में जनरल सीक्रेट्री के पद पर है। प्रार्थी श्रमिक को असिस्टेंट इंजीनियर (डिजाइन) के पद पर पदोन्नति देने के बाये आदेश दिनांक 3.5.1985 द्वारा फोरमैन के पद पर पदोन्नति दे दी गई भर्ती एवं पदोन्नति नियम 1972 के तहत फोरमैन का कोई पद ही नहीं था। प्रबंधन के कथनानुसार फोरमैन का पद द्वितीय श्रेणी का है जबकि पदोन्नति नियम के अनुसार सहायक अभियंता का पद प्रथम श्रेणी का है। विपक्षी संस्थान द्वारा स्टेगेनेशन के कारण अपग्रेडेशन करना कहा गया जो पूर्णतया गलत था। प्रार्थी श्रमिक को अपग्रेडेशन से कोई आर्थिक लाभ नहीं हुआ। विपक्षी संस्थान द्वारा आरएण्डपी नियमों का उल्लंघन कर पदोन्नति नहीं दी गयी है जो मैलाफाईड व अनुचित श्रम व्यवहार है। अतः प्रार्थी श्रमिक को दिनांक 17.05.84 से असिस्टेंट इंजीनियर (डिजाइन) / चीफ ड्राफ्टमैन के पद पर पदोन्नति का लाभ दिलाये जाने की प्रार्थना की है।

विपक्षी संस्थान द्वारा स्टेटमेंट ऑफ क्लेम का दिनांक 03.12.1998 को जवाब प्रस्तुत कर प्रारम्भिक आपत्ति करते हुये अभिकथन किया कि प्रार्थी यूनियन धारा 2-के औद्योगिक विवाद अधिनियम के प्रावधानों के तहत औद्योगिक विवाद एक व्यक्ति के लिए नहीं उठाया जा सकता। प्रार्थी यूनियन द्वारा इस मामले को पूर्व में उठाया गया जिसका प्रकरण संख्या सीआईटी 27 / 1989 था जिसमें दिनांक 15.1.94

को नो डिस्पुट का आदेश हुआ था। प्रार्थी श्रमिक के उक्त विवाद के संबंध में माननीय उच्च न्यायालय द्वारा भी उसकी रिट याचिका खारिज हो चुकी है। गुणवगुण पर विष्की संस्थान का कथन है कि प्रार्थी श्रमिक के पद को अपग्रेड करते हुये उसे पद का लाभ दिया जा चुका है। प्रार्थी आदेश दिनांक 3.5.85 से अपग्रेड पोस्ट पर दिनांक 18.05.1985 तक जोइन करने का विकल्प दिया था लेकिन प्रार्थी श्रमिक द्वारा जानबूझकर प्राप्त नहीं किया गया। प्रार्थी श्रमिक को विष्की के पत्र दिनांक 2.9.85 से सारी स्थिति स्पष्ट करते हुये बता दिया गया था कि फोरमैन डिजाइन जियोलोजिस्ट का जो कैडर बनाया गया है वह स्टेगेनेशन की स्थिति को समाप्त करने हेतु और लाभ देने हेतु किया गया था। प्रार्थी श्रमिक को लाभ देने हेतु आदेश दिनांक 3.5.85 जारी किया गया था। उस समय असिस्टेंट इंजीनियर डिजाइन या चीफ ड्राफ्टमैन का कोई पद खाली नहीं होने से पदोन्नति नहीं की जा सकती थी। कोई भी पदोन्नति रिक्त पद पर ही की जा सकती है। प्रार्थी यूनियन द्वारा उठायी गयी मांग गलत व अनुचित है। अतः प्रार्थी यूनियन द्वारा प्रस्तुत क्लेम खारिज किए जाने की प्रार्थना की है।

प्रार्थी यूनियन की ओर से स्टेटमेंट ऑफ क्लेम के समर्थन में मौखिक साक्ष्य में प्रार्थी साक्षी पी.एस. परमार का शपथ पत्र पेश हुआ है जिससे अप्रार्थी प्रतिनिधि ने जिरह की है। विष्की संस्थान की ओर से कोई मौखिक साक्ष्य पेश नहीं होने पर न्यायाधिकरण के आदेश दिनांक 18.11.2009 द्वारा साक्ष्य विष्की बंद की गयी।

मैंने प्रार्थी प्रतिनिधि की बहस सुनी, पत्रावली का ध्यानपूर्वक अवलोकन किया।

प्रार्थी के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी यूनियन का पदाधिकारी होने के कारण विष्की प्रबंधन प्रार्थी से कतिपय कारणों से खफा था इसलिए प्रमोशन जानबूझकर भर्ती व पदोन्नति के नियमों की अनदेखी करके एक फोरमैन द्वितीय श्रेणी का पद सृजन करके फोरमैन के पद पर की गई जिसका वेतनमान जिस समय के लिए प्रार्थी पदोन्नति हेतु अधिकारी था उसका उच्च वेतनमान था। महज प्रार्थी को प्रबंधन ने शिकार बनाया गया है। प्रार्थी के विद्वान प्रतिनिधि ने भर्ती एवं पदोन्नति नियम 1972 की अनसूची की ओर न्यायाधिकरण का ध्यान आकृष्ट किया है जिसमें सीनियर ड्राफ्टमैन के पद से पदोन्नति सहायक अभियंता (डिजाइन) या मुख्य ड्राफ्टमैन के पद पर 75 प्रतिशत पदोन्नति का प्रावधान है।

अब यदि प्रार्थी की साक्ष्य का परिशीलन करें तो प्रार्थी ने अपनी साक्ष्य में मुख्य परीक्षा शपथ पत्र पर स्टेटमेंट ऑफ क्लेम के अनुसार अभिकथन किया है तथा इस गवाह ने जिरह में यह बताया है कि विष्की संस्थान के नियम प्रमोशन 1972 के बने हुए हैं जिसके अनुसार सीनियर ड्राफ्टमैन से चीफ ड्राफ्टमैन या असिस्टेंट इंजीनियर डिजाइन के प्रमोशन चैनल है। इस गवाह की साक्ष्य से यह भी आया है कि ट्रेड यूनियन का महासचिव होने के कारण उसे गलत पद पर पदोन्नति दी गई। जिसको उसने स्वीकार नहीं किया क्योंकि वह नियमों के खिलाफ थी तथा इस गवाह ने इस सुझाव से इंकार किया है कि उसे पदोन्नति लाभ जो देने चाहिए वह दिए गए हों। विष्की की ओर से कोई प्रार्थी की साक्ष्य के खण्डन में कोई साक्ष्य पेश नहीं की गई है। इसलिए प्रार्थी की साक्ष्य के उक्त विवेचन में प्रार्थी की साक्ष्य पर अविश्वास किए जाने का कोई कारण नहीं है तथा अभिलेख से यह निर्विवाद स्थिति है कि प्रार्थी सन् 1970 से सीनियर ड्राफ्टमैन के पद पर कार्यरत था तथा दिनांक 3.5.1985 को उसका प्रमोशन फोरमैन के पद पर किया गया जबकि विष्की संस्थान पर लागू भर्ती एवं प्रमोशन नियम 1972 के अनुसार सीनियर ड्राफ्टमैन के पद से प्रमोशन का पद मुख्य ड्राफ्टमैन या सहायक अभियंता (डिजाइन) का पद है तथा प्रमोशन के वक्त यह पद खाली न हो ऐसी विष्की प्रबंधन की कोई साक्ष्य नहीं है तथा तर्क के लिए प्रमोशन हमेशा पद रिक्त होने पर ही किया जाता है फिर प्रार्थी को जब पद रिक्त ही नहीं था तो निम्न पद पर पदोन्नति क्योंकर दी गई। हालांकि प्रार्थी कर्मकार ने इसे स्वीकार नहीं किया था। यह स्थिति भी विष्की की ओर से स्पष्ट नहीं है। इसलिए मामले को समग्रता से देखने पर न्यायाधिकरण का विनम्र मत यह है कि प्रार्थी पी.एस. परमार को दिनांक 3.5.1985 को सीनियर ड्राफ्टमैन से फोरमैन के पद पर पदोन्नति का आदेश नियम विरुद्ध था। जिसको प्रार्थी पी.एस. परमार ने इंकार कर दिया था तथा उसको सीनियर ड्राफ्टमैन से प्रमोशन फोरमैन के बजाय नियमानुसार असिस्टेंट इंजीनियर डिजाइन या चीफ ड्राफ्टमैन जिसका वर्तमान पदनाम सीनियर जियोलोजिस्ट डिजाइन के पद पर पदोन्नति पाने का हकदार है तथा इसी पद का सेवा-परिलाभ भी दिनांक 03.05.1985 से पाने का मुश्तहक है। अतः इस रेफरेंस का उपरोक्तानुसार निम्न अधिनिर्णय पारित किया जाता है। –

अधिनिर्णय

“हिंदुस्तान कॉपर लिमिटेड, खेतड़ी कॉपर कॉम्प्लेक्स, खेतड़ी नगर, जिला-झुंझुन द्वारा प्रार्थी श्रमिक श्री पी.एस. परमार को सीनियर ड्राफ्टमैन (जीयोलोजी) के पद से असिस्टेंट इंजीनियर (डिजाइन)/मुख्य ड्राफ्टमैन जिसका वर्तमान पदनाम सीनियर जियोलोजिस्ट डिजाइन के पद पर पदोन्नत नहीं किया जाना उचित एवं वैध नहीं है। प्रार्थी श्रमिक श्री पी.एस. परमार सीनियर ड्राफ्टमैन (जीयोलोजी) के पद से असिस्टेंट इंजीनियर (डिजाइन)/मुख्य ड्राफ्टमैन जिसका वर्तमान पदनाम सीनियर जियोलोजिस्ट डिजाइन के पद पर पदोन्नति प्राप्त करने के हकदार हैं तथा इसी पद का सेवा-परिलाभ भी दिनांक 03.05.1985 से पाने का हकदार है।”

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 16 जून, 2017

का.आ.1485.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में कन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में कन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 59/2009) को प्रकाशित करती है, जो कन्द्रीय सरकार को 13.06.2017 को प्राप्त हुआ था।

[सं. एल-30012/75/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th June, 2017

S.O. 1485.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2009) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 13.06.2017.

[No. L-30012/75/2008-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/2009

General Secretary,
Triratna General Kamgar Union,
85, Vrindavan Colony, Divisional Commissioner,
Office Marg, Civil Line Camp,
Amravati

...Workman/Union

Versus

Sr. Depot Manager,
Indian Oil Corporation Ltd.(Marketing Division),
Nishatpura Depot, Diwanganj Road,
Nishatpura,
Bhopal (MP)

...Management

AWARD

Passed on this 17th day of April, 2017

1. As per letter dated 28-4-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-30012/75/2008-IR(M). The dispute under reference relates to:

“Whether the action of the management of Sr. Depot Manager, Indian Oil Corporation Ltd., Nishatpura Depot Bhopal in issuing termination order from service to Shri Mahendra Baldeo Shriwas w.e.f. 8-10-07 on the ground of production of fake caste certificate is justified? What relief the workman is entitled to get?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim. Case of workman is that his services are terminated vide order dated 4-10-07 on the ground of caste certificates of workman as Thakur (ST) was not issued by Tehsildar and Executive Magistrate Akola, Maharashtra. His services are terminated in violation of provisions of ID Act amounts to unfair labor practice. That father of workman Shri Baldeo S. Shriwas appointed as Class IV since 1963 and thereafter as TT Driver. The father of workman has suffered accident receiving injuries and died on 13-3-95 during course of employment. That as per the recruitment rules of IOCL, 2nd party No.1 is employer and Controlling Authority. Workman was working as Clerk Typist. Management has framed scheme for rehabilitation of family of workman dying while in service wherein option III indicate that an employee dies due to

accident during the course of employment, one of his dependent would be offered an employment. The scheme of rehabilitation framed by the corporation for welfare of dependents of their deceased employees providing employment to the dependents son, daughter on possessing the prescribed qualification and fulfilling the job specification. Appointment sought within 6 months of the death or permanent total disablement within a period of 3 years. A son daughter who is the candidate for employment must also meet the prescribed medical fitness and other standard for employment etc. That as per the superannuation benefit scheme, mother of workman had submitted option available in the scheme for rehabilitation claiming employment of her son Mahendra, workman. Application is submitted in prescribed form giving detailed particulars. Rehabilitation scheme was introduced by IOCL to provide immediate financial assistance to the dependents of deceased family. That interview call was issued to 2nd party workman on 28-8-96 under "employment of dependent for post of junior attendant" On 29-8-96, call letter and telegram were received by workman for appearing before Authority. The order of appellant was issued on 7-2-97 in general prescribed form, for the post of Junior Operator(field) with the office of Sr.Station manager at Nagpur, AFS on scale 2234-40-2554 etc. In the appointment letter, condition No.18 provided for provisional appointment subject to SC/ST/OBC certificate verified through proper channels. That said condition is not applicable to workman s his appointment was on compassionate ground. 2nd party workman joined service on 27-2-97 at office of Sr.Station Manager at Nagpur AFS as Junior Operator. The employer have issued prescribed form of appointment order. each and every appointment order was issued in prescribed form. Prescribed form was to be used only in case of General appointment for SC ST OBC without considering workman appointed under rehabilitation scheme on compassionate ground, management issued appointment order in general form to him. Workman reiterates that as he was appointed on compassionate ground and not general recruitment, termination of his service that caste certificate submitted by him was found false is illegal. Termination of services of workman is contrary to the policy of rehabilitation scheme. Issuing termination order dated 4-10-07 without issuing showcause notice or giving opportunity to explain remedy is illegal. The employer had not issued any chargesheet. DE was not conducted against him to prove misconduct. Termination of his service is illegal.

3. Workman submits he personally visited to the Tahasildar and Executive Magistrate, Akola and also produces his caste certificate before them for verification and also asked them who were signed his caste certificate on 12-9-90. At that time, he was minor and under 17 year of age. He was informed that caste certificate was issued by Nieb Tahasildar- Shri Murtuza Khan. After death of his father, he was appointed on compassionate ground. Termination on basis of caste certificate is illegal. That workman was in continuous service of the management till his termination on 4-10-07. After termination of his service, he is unemployed. On such ground, 2nd party prays for reinstatement with continuity of service and backwages.

4. Management filed Written statement . management submits that order dated 4-10-07 is valid. It doesnot amount to unfair labour practice. 2nd party obtained employment submitting false certificate of ST. said certificate was sent for verification to Executive Magistrate Akola., management received letter dated 2-1-07 from Tahsildar and Executive Magistrate Akola informing that caste Thakur ST certificate dated 12-9-90 was not issued by their office to Mahendra Kumar Baldeo. Therefore service of workman were terminated. Workman is not entitled to any relief. It is reiterated that termination of workman is legal. It is true that as per record, appointment of applicant was under ST category under the scheme for rehabilitation of family of the workman dying in service. That workman had joined service on 27-2-97 in pursuance of appointment letter dated 7-2-97. He was working as typist clerk at IOCL, Nishatpura depot, Bhopal. His services were terminated as per Clause 18 of his appointment order dated 7-2-97. That applicant availed all the relax standard in selection process as envisaged under the selection process for reserved category. Workman also availed promotional benefits of reserved category candidate. Workman submitted caste certificate. He belongs to ST category "Thakur Community". The management submits that in the year 2005, internal certificate was issued by corporation as per order passed by Hon'ble Delhi High Court in Writ Petition No. 5976/03 regarding securing employment in Government of India producing forged and false ST certificates asking the dealing officers to verify the ST certificates of the candidates. Accordingly the internal guidelines for ST candidates were issued by the corporation thereby asking all local offices to go for verification of ST Caste certificates. On verification, it was noticed that candidates had submitted a bogus/ false certificate , before initiating action, the candidate should be called upon the deposit the original certificate. The applicant failed to comply with said direction. Management further submits that workman is not entitled to any relief in respect of order of termination dated 4-10-07, termination of workman is legal. Workman was appointed against reserved category of ST. on verification, his certificate was found bogus. Services of workman are terminated as per clause 18 of appointment order is legal. That management is company incorporated under Indian Company's Act. It is public sector undertaking,. The reservation policy in recruitment declared by Government of India time to time are followed. Notice for termination of services of workman was not required in view of Clause 18 of the scheme. Management reiterates that workman is not entitled to any relief. Workman has failed to submit his original caste certificate for verification. Certificate was proved bogus. Management prays for rejection of claim.

5. As per order on application dated 20-10-15, the issues are framed as under

(i) Whether the management proves that caste certificate produced by workman is false and bogus?	In Affirmative
(ii) Whether the workman was appointed on compassionate ground and caste certificate was not basis for his appointment?	In Affirmative
(iii) Whether termination of services of workman is legal and proper?	In Negative
(iv) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Issue No.1& 2- Both the issues are interlinked therefore taken together for decision. Services of Ist party are terminated on ground said caste certificate ST Thakur entry submitted by workman is bogus. Case of workman is that he was appointed on compassionate ground after death of his father. Caste certificate was not basis for his appointment. Condition 18 of appointment letter are not applicable to him as his appointment was under Rehabilitation scheme on compassionate ground.

7. Workman filed affidavit of his evidence. In his affidavit of evidence, workman has stated that his father Baldeo was in employment of management since 1963 as Class IV employees thereafter as TT Driver. His father died on 13-3-95 due to truck accident. His father died during course of employment. Rehabilitation scheme introduced by IOCL provides by dependents employment. The application was submitted by his mother on 20-8-96. He was called for interview. Appointment letter was issued to him on 7-2-97 on probation for a period of one year. On completion of one year probation, his services were confirmed on 23-3-98. He qualified departmental exam for promotion to the post of clerk. He was given promotion on post of clerk, typist at Bhopal, MP. He served on said post till 8-10-07 for 10 years. His services were terminated by order dated 4-10-07 without complying mandatory provisions. He was not served with one months notice, retrenchment compensation was not paid to him. He submitted representation for reinstatement as 30-10-07, approach notice given on 8-12-07 by RPAD. He is not in gainful employment after termination of his service. In his cross-examination, workman denies that he was appointed on compassionate ground for period of one year. He admits he was regularized on 23-3-98. He claims ignorance about para-18 of appointment letter. He denies that he produced false caste certificate. He denies that he doesnot belong to ST. Certificate of ST was obtained by his father. He denies that he was promoted to the post of typist on the basis of false certificate. Workman admits in interview letter, he was directed to produce original documents. In documents produced by him, his caste was shown Thakur. Workman denies he was appointed against reserved post. Workman denied after termination of his service, he submitted application. In his further cross, workman says after 10 years of his appointment, caste certificate was not called from him. Therefore he did not produce caste certificate. He denies that he files false affidavit of evidence.

8. Management filed affidavit of witness of Shri Praveen Kumar Srivastava, Occupation Manager ER . Affidavit of management's witness is devoted on the point that termination of workman is legal and valid. The caste certificate produced by workman was sent for verification to Executive Manager, Akola. The corporation received letter dated 2-1-07 informing that caste certificate dated 12-9-90 was not issued by their office. Consequently services of workman were terminated. Termination is legal. As per record, appointment of workman was under ST category. Under scheme for rehabilitation of family of workman dying in service. Clause 18 of appointment letter dtyed 2-2-97 said condition was applicable for appointment of 2nd party workman. Workman availed all relaxation, in selection process for reserved category. Workman availed promotional benefits under reserved category, ST- Thakur community. It is reiterated that termination of workman is legal. That the management is required to adhere reservation policy in recruitment declined by Government of India time to time. That workman failed to produce original caste certificate for verification. The certificate was proved bogus. In his cross examination, management's witness says workman was appointed under rehabilitation scheme. The process for appointment on regular basis and under rehabilitation scheme are different. Management's witness admits appointment under rehabilitation scheme. Post are not advertised. Workman was found eligible under rehabilitation scheme after death of his father. Workman was appointed in Grade I post on probation for one year. Workman was confirmed in service after probation of one year. Workman passed departmental examination. He was appointed as clerk. Personal file of permanent employee is maintained in office. After re-examination of workman, documents Exhibit M-5 to 6 are admitted in evidence as secondary evidence. In his further cross, management's witness says appointment order dated 7-2-97 was issued. Management's witness denied that after

appointment of workman, document of educational qualifications were called. Management's witness explained documents regarding education were called from workman Exhibit M-2 is offer of appointment. Appointment letter was issued on 7-2-97. On same day workman was appointed as per Exhibit W-4.

9. In Exhibit M-1, details at the time of appointment of workman are recorded. Appointment in pay scale 2234-3504, date of birth 28-8-73, educational qualification SSC. B.Com Part-II, Caste ST "Thakur"- employment of dependent, the modification of rehabilitation scheme is shown on reverse page of Exhibit M-1. Clause 3.1(a) provides employment of eligible and suitable dependents son, daughter prescribed qualification fulfilling job specifications provided there is a regular induction level vacancy in the event of death of an employee along with superannuation benefit scheme based on actual years of reckonable service. (b) the eligible dependent ward must possess minimum qualification of Matric+ ITI in the related trades or other higher induction level qualification specified from time to time to be eligible for considering for employment. The documents produced by workman Exhibit W-1 annexed with zerox copy of rehabilitation scheme of Option III provides employment of eligible and suitable dependent son/daughter alongwith benefit under superannuation benefit scheme based on actual years of reckonable service. Exhibit W-2 is application submitted by Smt. Ramratan bai mother of workman giving her option for appointment of her son Mahendra. Other details were given in Annexure I. Exhibit W-3 is call issued to workman for interview directing to bring original certificates in connection of date of birth, educational qualification, caste etc. for verification. Exhibit W-3(a) is Telegram issued for interview call. Exhibit W-4 is appointment letter. Condition No.18 in the appointment letter pertains to appointment was provisional and subject to SC ST PBC certificates being verified through proper channel. If verification reveals that claim for SC ST OBC as the case may be false, services would be terminable without assigning any further reasons. Exhibit W-5 shows that workman was confirmed in service as junior operator on 23-3-98. Exhibit W-6 is order of termination issued to workman that Tehsildar conveyed that Caste Thakur dated 12-9-90 was not issued by their office in name of workman. Exhibit W-7,8 are representation submitted by workman. Exhibit W-9 is transfer certificate of workman, his caste is shown Thakur. Exhibit W-9(a) is duplicate school leaving certificate. Copy of caste certificate is produced on record. As per Exhibit M-6, office of Executive Magistrate informed management that caste certificate dated 12-9-90 was not issued by said office. In Exhibit M-2 attestation form , caste of workman is shown Hindu-ST Thakur. Other details of his educational qualifications are shown B Com Ist year pass, 2nd year fail. Exhibit M-3 is application for employment detailed information of workman are shown including educational qualifications B com 2nd year fail. Caste Thakur St. said document was submitted on 27-2-97,. The documentary evidence shows Exhibit W-1 and rehabilitation scheme is clear that dependent employment provided to son and daughter of deceased employee is not based on reservation of caste. Application Exhibit W-2 submitted by mother of 2nd party workman for compassionate ground as per rehabilitation scheme and not based on caste reservation. The appointment order Exhibit W-4 doesnot show workman was appointed in reserved post for ST category. The conditions of appointment Exhibit W-4(a) particularly condition No.18 was not applicable to the Ist party workman. However Ist party workman has submitted documents along with caste certificate as ST Thakur was recorded in is service particulars. Though the Ist party workman was not appointed against reserved post for ST category. However he had shown his caste Hindu Thakur St in documents Exhibit M-2,3. Evidence of management's witness that management received letter Exhibit M-6 caste certificate was not issued by office of Executive Magistrate is not shattered. The verification of the caste was made in the year 2007 after lapse of 10 years.

10. Union Representative Mr. Sawai on the point relies on ratio held in case between

Kamal Nayan Mishra versus State of MP and others reported in SCLJ-2010-764. Their Lordship dealing with question of termination held for giving wrong information and concealment of facts in attestation form at the time of initial recruitment confirmed Government servant holding civil post protected by Article 311 of the constitution . Attestation form required to be furnished after 14 years of service. Action taken in the case of appellant after 7 long years after knowing that he had furnished wrong information. Belated decision unjustified and violative of Article 311 of the constitution. Their Lordship further held false information furnished to the employer by Government servant to be treated as misconduct, probationer can be terminated without providing opportunity to show cause once he is confirmed, punishment can be imposed only after subjecting him to an appropriate disciplinary proceeding as per the rules.

In present case, no disciplinary enquiry was held against workman for furnishing false information for verification. Action of termination taken against workman cannot be said legal on said ground.

In case between Polymers Paper Ltd and Presiding Officer, Industrial tribunal and another reported in 2011-IV-LLJ-211 their Lordship dealing with question of practice and procedure held if Labour Court found domestic enquiry not fair, it ought to have granted leave sought by management to adduce evidence. Labour Court not having done so, matter remanded to it for fresh decision.

In present case, no enquiry was held against workman. Parties are given opportunity to prove their respective contentions. Issues have been framed , ratio held in the case cannot be applied to case at hand.

In case between State of Chhattisgarh and others versus Dhirio Kumar Sengar reported in 2009(13)SCC-600. Their Lordship dealing with compassionate appointment held can be granted when dependents of deceased employee living in penury cannot be claimed by way of inheritance.

The documents produced in the case application for compassionate appointment was submitted by mother of workman. Selection was made while issuing appointment order, conditions were annexed about verification of documents including caste certificate. As appointment of workman was not by way of general recruitment, he was appointed on compassionate ground after death of workman, ratio cannot be applied to case at hand.

Reliance is also placed on ratio held in case between National Institute of Technology versus Niraj Kumar Singh reported in AIR-2007-SC-1155. Their Lordship dealing with compassionate appointment held all applicants must be in consonance with Article 16 of the constitution of India exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment therefore on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder.

Workman has been appointed on compassionate basis as dependent son of deceased employee. Therefore ratio held in the case cannot be applied to case at hand.

In case between Md.Zamil Ahmed versus State of Bihar and others reported in 2016-II-CLR-388. Their Lordship dealing with compassionate appointment held there is no justification to dig out the appellants case after 15 years of his appointment and to terminate his service.

In present case, Ist party was appointed in February 97, verification of caste certificate of workman was carried after 10 years. Appointment of workman was on compassionate ground. Termination of workman on the ground that caste certificate was found bogus is not justified.

11. Counsel for management relies on ratio held in case between

Arun S/oVishwanath Sonone versus State of Maharashtra and others reported in 2015(1)Mh.LJ-457. Their Lordship dealing with invalidation of claim by Scrutiny Committee. Relief of protection of service can be granted by High court on basis of decisions of Supreme Court in case of Kavita Solunke versus State of Maharashtra and Shalini versus New English High School Association, manner and extent to which such protection is to be made available.

Reliance is also placed in case between Kendriya Vidyalaya Sangathan and others versus Ram Ratan Yadav reported in 2003(3)SCC-437. Their Lordship dealing with dismissal suppression of material information relating to character and antecedents considered a major offence for which punishment may extend to dismissal from service as per terms of appointment. Object of seeking the information being to verify the character and antecedents the nature or gravity of the offence and ultimate result of criminal case are not relevant considerations. The attestation form which was required to be duly filled and submitted by appointee interalia containing questions if he ever had been prosecuted or convicted by court of any offence and if any case was pending against him in any court at the time of filling up attestation form. Respondent appointee replying both the questions in the negative and also certifying that the information given by him was correct and complete to the best of his knowledge although a criminal case against him was pending at that time. Their Lordship held it amounted to suppression of material information and making false statement which has a clear bearing on the character and antecedents of respondent in relation to his continuance in service

In present case workman was not appointed on post reserved for ST rather he was appointed on compassionate ground under rehabilitation scheme after death of his father. Ratio held in the case cannot be applied to case at hand.

Reliance is also placed in case between Vandana Mule versus Union of India reported in 2017-II-LLJ-35(MP) . Ratio held in the case pertains to compassionate appointment is given by relaxing rules and it depends on the basis of existence of policy/ scheme. It cannot be said that petitioner has any enforceable right of compassionate appointment. In policy, there is no provision for grant of compassionate appointment. It is ordered that if petitioner has still not received ex gratia amount, he may prefer appropriate application for grant of said amount.

The ratio cannot be applied to case at hand as there is clear evidence on record that after application submitted by mother of workman, he was appointed on compassionate ground under the rehabilitation scheme.

12. Counsel for management also relies on judgment in

Civil Appeal No. 3423 of 2017. Management of State Bank of India versus Smita Sharad Deshmukh and another . In para 9 of the judgment, their Lordship observed in the case before it, it is an admitted position that the

certificate produced by the employee is a forged one. It has been categorically found by the Industrial Tribunal on the basis of evidence, that the employee was fully aware of the fact that the document was a forged one. In such circumstances, there is no basis at all for the stand taken by the High Court that the management did not establish that the employee had knowledge about the certificate being a forged one.

In such circumstances, employee had knowledge about the certificate being forged. From reading of para 2 of the judgment, it is clear that certificate in question was produced by respondent employee was about passing CA II Part II Examination was found forged.

In present case, caste certificate submitted by workman is found bogus as the same was not issued from office of Executive Engineer. Workman was not appointed on the basis of his caste certificate. He was appointed on compassionate ground on rehabilitation scheme. Therefore the principles laid down in the judgment cannot be applied to case at hand.

13. Considering evidence on record discussed above and legal position laid down in the above cited judgments, it is clear that the appointment of Ist party was on compassionate ground after death of his father as per rehabilitation scheme. Condition No. 18 of appointment letter is not relevant for appointment of workman therefore Issue No.2 is answered in Affirmative.

14. As far as Issue No.1 is concerned, caste certificate produced by workman was not issued by Office of Tehsildar in letter Exhibit M-6 produced by 2nd party is not shattered. Evidence of management's witness on the point is also not shattered. Issue No.1 is answered in Affirmative.

15. Issue No.3- In view of my finding in Point No.1 caste certificate submitted by workman after his appointment was found false. However workman was not appointed against post reserved for ST category. Workman was appointed on compassionate ground under the rehabilitation scheme. Workman is not entitled to benefit of ST recorded in his service record Exhibit M-1. Caste of workman shown in Exhibit M-2,3 workman is not entitled to said benefit as his appointment was on compassionate ground as per rehabilitation scheme after death of his father. Termination of workman on ground of caste certificate submitted by him was false is illegal. Accordingly I record my finding in Point No.3.

16. Point No.4- In view of my finding in point No.3, termination of services of workman on ground of submitting false caste certificate is illegal. Workman was appointed on compassionate ground as per rehabilitation scheme after application submitted by his mother Exhibit W-2, after his appointment as per Exhibit W-4, workman directed to produce caste certificate, the same was found bogus. When workman was entitled for appointment on compassionate ground being son of deceased workman, termination of his services is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. Workman in his evidence has claimed after termination of his service, he was unemployed, he was not in gainful employment, his evidence is not shattered. Evidence of workman that he was unemployed how he was surviving after termination of service is not clear from his evidence. Evidence of workman that he was unemployed totally needs to be carefully appreciated. As workman had submitted caste certificate claiming he belongs to ST and consequently said certificate was found bogus. However his appointment was not against reserved post for ST category, workman cannot claim benefit of reservation for post of ST category. Therefore workman deserves to be reinstated to his initial post and 50 % backwages from date of order of reference.

17. In the result, award is passed as under:-

- (1) The action of the management of Sr. Depot Manager, Indian Oil Corporation Ltd., Nishatpura Depot Bhopal in issuing termination order from service to Shri Mahendra Baldeo Shriwas w.e.f. 8-10-07 on the ground of production of fake caste certificate is illegal.
- (2) Order of termination of services of workman be set-aside. 2nd party is directed to reinstate workman to the original post of junior operator with continuity of service and 50 % backwages from date of order of reference i.e. 28-4-09.
- (3) Monetary benefit as per above order be shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1486.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन रेयर अर्थ लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूबनेश्वर के पंचाट (संदर्भ संख्या 24/2014, 126/2001, 3/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.06.2017 को प्राप्त हुआ था।

[सं. एल-29012/24/1997-आईआर (एम),

सं. एल-29025/28/2005-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th June, 2017

S.O. 1486.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2014, 126/2001, 3/2006) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Rare Earth Limited and their workman, which was received by the Central Government on 14.06.2017.

[No. L-29012/24/1997-IR (M),

No. L-29025/28/2005-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE MISC. CASE NO. 24/2014

Between:

The Senior General Manager,
Indian Rare Earth Limited,
(Orissa Sand Complex),
Mattikhalo, Ganjam, Orissa, ...Applicant-Management

(And)

1. Shri Raj Kumar Panda,
C/o. Saroja Panda, Teacher, K.C. Public School,
Ananta Nagar, 1st Lane, Berhampur,
Ganjam, Odisha.
2. Shri Ajaya Kumar Choudhury,
At. Gajapati Nagar, 6th Lane, Berhampur-19,
Ganjam ...Opp. Party-Workmen.

Tr. INDUSTRIAL DISPUTE CASE NO. 126/2001

Between:

The Executive Director,
Indian Rare Earth Limited,
Mattikhalo, Ganjam, Orissa ...1st Party-Management

-Versus-

Shri Ajaya Kumar Choudhury,
Ex-Senior Clerk, Indian Rare Earths Limited,
At. Gajapatinagar, (Back side of Commercial
Tax Office, Berhampur, Dist. Ganjam, Orissa ...2nd Party-Workman.

INDUSTRIAL DISPUTE CASE NO. 3/2006

Between:

The Head,
Indian Rare Earths Ltd, OSCOM,
At. Matikhalo, Po. Chatrapur,
Orissa, Ganjam

...1st Party-Management

-Versus-

Shri Raj Kumar Panda,
Srikishna Vihar, 2nd Line Ambapua,
Berhampur, Dist. Ganjam, Orissa

...2nd Party-Workman.

Date of Passing Award – 19th May, 2017

Appearances:

M/s. N.K. Mishra, Advocate ... For the applicant-Management.
M/s. Kailash Mishra, Advocate ... For the Opp. Party-Workmen.

AWARD

Misc. Case No. 24/2014, I.D. Case No. 126/2001 & 3/2006 are disposed of by this common Order/Award since the termination of service of the disputant workman Shri Ajaya Kumar Choudhury & Shri Raj Kumar Panda by the Management preceded by a departmental proceeding is the core issue in the disputes raised in all the above cases.

2. The Misc. Case No. 24/2014 is registered on an application of the Management under section 33-2(b) of the I.D. Act for express approval of its action in dismissing the services of the disputant workmen namely Shri Ajaya Kumar Choudhury and Shri Raj Kumar Panda on account of they being found guilty of charges of gross misconduct in a departmental proceeding whereas, the I.D. Case No. 126/2001 and 3/2006 are registered out of references made by the Government of India in the Ministry of Labour in exercise of its power conferred under section 10 of the I.D. Act.

3. The schedule of reference in the I.D. Case No. 126/2001 is "Whether the action of the management of Indian Rare Earths Ltd., Po. Matikhalo, Dist. Ganjam in dismissing the service of Shri Ajaya Kumar Choudhury, Ex-Sr. Clerk/Typist is legal and justified? If not, to what relief the workman is entitled?" and the schedule of reference in the I.D. Case No. 3/2006 is "whether the action of the management of M/s. Indian Rare Earths Limited, Matikhalo, Chatrapur (Ganjam) is justified in dismissing Shri Raj Kumar Panda from service with effect from 22.04.1991 even after disapproval of the action of the management for dismissal of Shri Panda by the Hon'ble Industrial Tribunal, Bhubaneswar is I.D. Misc. Case No. 1/1991(C) dated 25.11.1997? If not, what relief the workman is entitled to?"

4. Undisputed facts giving rise to the above references and the application under section 33(2)(b) may be stated as follows:-

In a joint departmental enquiry the disputant workmen Shri Ajaya Kumar Choudhury and Shri Raj Kumar Panda were issued with separate charge-sheets with allegations of committing serious misconduct by exhibiting riotous and disorderly behaviour on 19.5.1990 in place of their employment having led a mob to the office of the C.M.D., abusing and manhandling the General Manager and the D.G.M. (Mines). They are stated to have abused the Mines Manager in filthy and obscene languages inside the office premises. On 20.5.1990 at around 2.45 P.M. they along with others gave inflammatory speech against the Mines Manager and abused him in slang languages in front of his residence and threatened him with dire consequences. An allegation was also raised in the charge-sheet that both the disputant workmen left their place of work without any authority and indulged in the above activities. Both the workmen were placed under suspension before initiation of departmental proceeding and asked to submit their explanations for such accusations. Both of them submitted their separate explanations. The Management was not satisfied with such explanations and initiated a domestic enquiry appointing one Shri S. Mishra, retd. Deputy Labour Commissioner, Bhubaneswar (an outsider) as the Enquiry Officer. One Shri S.K. Mahapatra, Personnel Officer of the Management was appointed as Marshalling/Presenting Officer. It is pertinent to mention here that the joint enquiry was held on the request and consent of the disputant workmen. A co-worker was allowed to represent them in a departmental proceeding on their request. Date was also fixed for the joint enquiry and the disputant workmen and the Presenting Officer were intimated accordingly in that regard. As the disputant workmen are stated to have deliberately remained absent in the departmental proceeding, the enquiry officer proceeded with the domestic enquiry in their absence after giving certain adjournments at the initial stage of the departmental proceeding and then recorded statements of witnesses in absence of the delinquent workman and their representative. On closure of the enquiry he submitted a report to the disciplinary authority holding the disputant workmen guilty of charges framed against them except the

charge of leaving their place of work without any authority. The Management imposed a penalty of dismissal on the disputant workmen on conclusion of domestic enquiry

5. It emerges from the statements of claim filed by the individual disputant workman in the reference cases and their show cause filed in the Misc. Case that the disputant workmen have challenged their dismissal on the grounds that the domestic enquiry was defective on account of the same being conducted in violation of principles of natural justice and provisions of the Certified Standing Order. The fairness of the departmental enquiry has been challenged mainly on the reasons that; (i) charges raised in the domestic enquiry were not specific and clear and the same were ambiguous; (ii) the enquiry was conducted without supply of list of witnesses and documents likely to be relied upon in the domestic enquiry; (iii) due opportunities were not given to them to defend and to put-forth their case properly; (iv) the enquiry officer was not appointed in accordance with the Standing Order and he was totally biased; (v) they were not provided with full subsistence allowance and (vi) the dismissal order was issued without supply of a copy of the enquiry report and an opportunity of being heard on the said report. It is their further contention that they being the President and the Secretary (being office bearers) of the 2nd party-Union were protected workmen and the action of dismissal was taken without prior permission of this Tribunal as contemplated under section 33(1) of the I.D. Act since a previous dispute was pending in the Tribunal for its adjudication. They were removed from service out of victimization because being office bearers of the Union they used to put-forth genuine demands of the employees before the officers of the Management. It is also alleged that provisions as required under section 33(2)(b) were not complied with since they were not paid full wages of a month at the time of their dismissal and steps were not taken simultaneously to obtain express approval of the action of the Management in terminating their service. Contentions have also been advanced that the penalty of dismissal in the departmental proceeding was not proportionate to the gravity of alleged misconduct committed by them and the action of the Management initiating a departmental proceeding against the two disputant workmen only leaving others in the mob which gharoed and man-handled the officers of the Management exhibits the vindictiveness on the part of the Management and unfair labour practice adopted by it against the disputant workmen. Prayer has been made by the 2nd party-Union as well as the individual disputant workman that application under section 33-2(b) of the Management shall be dismissed and the disputant workmen be reinstated with back wages and other service benefits.

6. It is the stand of the Management that since the disputant workmen were actively involved in riotous and disorderly behaviour in the alleged incident, charge-sheets were issued to them separately and a joint departmental proceeding was conducted on their consent. They were provided with list of witnesses and documents likely to be presented in evidence in the departmental proceeding. They were allowed to be represented through a co-workman. They did not attend the enquiry deliberately and took adjournments from time to time on different pleas. After giving certain adjournments the enquiry officer proceeded with the enquiry ex parte when he was satisfied that the disputant workmen were seeking adjournments on frivolous reasons. The Certified Standing Order does not prohibit an outsider to become an enquiry officer in a domestic enquiry. To avoid allegations of biasness and partiality, the Management choose to appoint a retired government official as enquiry officer. Due opportunities were given to the disputant workmen to defend and to put-forth their case but, they did not participate in the enquiry deliberately for which the enquiry officer was compelled to record the proceedings in their absence. As the disputant workmen were found guilty of gross misconduct by exhibiting riotous and disorderly behaviour to their officers and manhandled them, they were rightly dismissed from their service. The disputant workmen were not declared protected workmen as contemplated in the I.D. Act. Since a previous dispute was pending in the Tribunal concerning the disputant workmen and others, one month notice pay was given to the disputant workmen and step was taken simultaneously for taking express approval of the Tribunal for such action of the Management while removing them from service. There was no violation of principle of natural justice and provisions of Certified Standing Order while conducting the domestic enquiry. The departmental enquiry was not defective warranting any interference by the Tribunal. Hence, prayer has been made for dismissal of the references and for grant of approval to the action in dismissing the disputant workmen from service.

7. It is pertinent to mention here that this Tribunal vide its order dated 25th November, 1997 in Mic. Case No. 01/1991(C) denied approval to the action of the Management in dismissing the disputant workmen taking a stand that the departmental proceeding was initiated to victimize the disputant-workmen. The Management preferred a Writ Appeal before the Hon'ble High Court of Orissa against such order of the Tribunal. In the event of dismissal of the said writ on merit in the Hon'ble High Court, a Civil Appeal was preferred by the Management before the Hon'ble Apex Court challenging the order of the Tribunal as well as the order of the Hon'ble High Court. The Hon'ble Apex Court in its judgement/order dated 01.04.2014 set aside the order of this Tribunal and remitted back the matter to this Tribunal for its fresh disposal on the reason that the Tribunal has refused approval of the action of the Management holding it was a case of victimization only and it failed to consider and examine several other pleas raised by the disputant workmen such as the departmental proceeding being conducted illegally in ex parte, dismissed the workmen without making available a copy of the enquiry report and show cause notice to them and whether the workmen were protected workmen in terms of section 33(3) of the Act. It is the opinion of the Hon'ble Apex Court that the above questions

raised by the disputant workmen are germane to the issue involved in the dismissal of the workmen ought to have been decided by the Industrial Tribunal. When the matter was remitted back, the above I.D. Cases were already registered and pending for disposal on account of references made by the Government of India, Ministry of Labour as a dispute was raised on dismissal of the disputant workmen from service. Since dismissal of the disputant workmen is the core issue in all the above cases, it was decided to take up hearing of all the matters simultaneously. In the course of hearing the parties consented to adopt same set of evidence in all the cases.

8. On the pleadings of the parties different sets of issues have been settled in both the references and in the Misc. Case touching to the fairness of the departmental enquiry on the ground of domestic enquiry being conducted allegedly without supply of copies of documents relied upon in the domestic enquiry and the enquiry being conducted ex parte. Issues have been also settled in the Misc. Case whether the disputant workmen were protected workmen in terms of Section 33(3) of the I.D. Act at the time of their dismissal and whether all the provisions and formalities as required under section 33(2)(b) of the Act were complied with while dismissing the services of the disputant workmen and if the dismissal of the disputant workmen was legal and justified and whether they are entitled to any relief. As a matter of settled principles the fairness of the departmental enquiry was taken up as a preliminary issue and the Tribunal by its order dated 18th May, 2016 in separate sheets has arrived at a conclusion that no principle of natural justice seems to have been violated while conducting the departmental enquiry warranting to vitiate the departmental proceeding. While deciding the preliminary issue all the pleas raised before this Tribunal as well as Hon'ble Apex Court were taken care of and answered. The said findings passed in separate sheets be formed part of this Award/Order. After findings of the preliminary issue the parties to the cases were given opportunities to adduce further evidence on other issues including on the quantum of the punishment imposed on the disputant workmen.

9. At the cost of repetition it may be stated here that pleas raised by the disputant workmen in regard to non-supply of copies of documents relied upon by the Management in the domestic enquiry, denial of due opportunities to defend them in the domestic enquiry, non-supply of findings of the enquiry report and second show cause before inflicting major punishment of dismissal, whether the workmen were the protected workmen in terms of Section 33(3) of the Act and whether there was any violation of the provisions of the Certified Standing Order and principles of natural justice have already been dealt in the findings of the preliminary issue which has been formed part of this order, and as such other issues relating to compliance of formalities as required under section 33(2)(b) of the I.D. Act and quantum of punishment imposed on the disputant workmen and to what relief the workmen are entitled to are to be taken into consideration now.

10. It has been contended on behalf of the disputant workmen that as per the evidence of W.W.-1 Ajaya Kumar Choudhury he was paid one rupee less towards house rent and he was also not paid higher scale of wage at the time of dismissal though he was qualified and entitled to a higher post by the time of departmental action. On a close scrutiny of cross examination of W.W.-1 it is elicited from him that he was receiving Rs. 210/- towards house rent for the month of January, February, March and April, 1991. The said amount is stated to have been paid in one month wage amount and there is nothing specific on the record to suggest that he was paid Rs. 209/- instead of Rs. 210/- which was given to him towards house rent for the month of January to April, 1991. That apart, the Management witnesses were not confronted that disputant workman Shri Choudhury was paid Rs. 1.00 less in his wage. On the other hand M.W.-2 was suggested that Shri Choudhury was paid 0.50 paise less towards his house rent. Such discrepancies being found in the stand of the disputant workman Shri Choudhury I am not inclined to accept the plea of Shri Choudhury that he was paid Rs. 1.00 less than his actual wage. Similarly there is no serious dispute that Shri Choudhury was not promoted to higher scale when he was dismissed from service and as such question does not arise for making payment of one month wage in higher scale when order of dismissal was passed against him. It is well settled in a catena of decisions of the Hon'ble Apex Court that in a matter of Section 33(2)(b) of I.D. Act the scope and the power and function of the Tribunal is limited to the enquiry as to whether a proper domestic enquiry in accordance with the relevant rules/standing orders and principles of natural justice has been held; whether a prima facie case has been made out by the employer against the employee or not; whether the employer has come to a bonafide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee; and the Tribunal has to further find out as to whether the employer has paid or offered to pay wages for one month to the workmen and simultaneously moved the appropriate court of law/adjudicator for express approval of its action. A strenuous argument has been advanced on behalf of the disputant workmen that action of the Management initiating a departmental proceeding against only disputant workmen is a malafide one when there was a mob of 30 workmen in the alleged incidence in which the officers of the Management were hacked and man-handled. The submission having been dealt in the preliminary findings needs no further discussion. If, once the Tribunal comes to a conclusion that the Management has not acted malafide and that there has been proper enquiry, and that the conclusion arrived at by the enquiry officer is a possible one on the evidence laid before it, the Tribunal cannot substitute its judgement for the judgement of the enquiry officer though it may have come to a different conclusion on the evidence adduced before the enquiry. Thus, an Industrial Tribunal has no jurisdiction while deciding an application under section 33(2)(b) of the Act to consider whether the punishment given to the workmen is harassed or excessive or to substitute another

punishment or to impose any conditions on the employer before the requisite permission could be granted. In the above backdrops and settled principle when there is nothing on the record and when the disputant workmen failed to establish by adducing credible and coherent evidence that they were not paid one month wage or a less of the same and rather, it is emerging from the oral as well as documentary evidence led before this Tribunal that the Management had moved the Tribunal simultaneously for an express approval of its action, there is no valid ground/reason to refuse approval of the action as required under the Act. In that view of the matter the Misc. Case No. 24/2014 is to be allowed in favour of the Applicant-Management.

11. Coming to other issues such as quantum of punishment imposed upon the disputant workmen and whether dismissal from the services of the disputant workmen was legal and justified as raised in the references under section 10 of the Act it is pertinent to mention at the outset that the jurisdiction exercised by the Tribunal while according approval under section 33(2)(b) is limited, whereas, the power of the Industrial Courts under section 10 of the Act is quite extensive. By introduction Section 11-A of the Act the Tribunal is required to be satisfied itself whether the misconduct alleged is proved or not and even it has power to interfere with the punishment imposed by the employer. In other words in a matter of reference under section 10 of the Act the the power of the Tribunal lies to differ from the Management both on the findings of the misconduct arrived at as well as the punishment imposed by it. In that view of the matter it is to be seen and examined now under Section 10 of the Act whether the misconduct allegedly to have been committed by the disputant workmen is proved in the domestic enquiry or not. As per the pleadings and materials advanced by the parties it is apparent that the disputant workmen did not participate in the enquiry and took some adjournments from time to time on certain pleas and inspite of some accommodation extended by the enquiry officer when they failed to attend the enquiry on the date fixed, the enquiry officer conducted the enquiry in their absence and recorded statement of witnesses examined on behalf of the Management. Relying on such uncontroverted statements of witnesses and the documents placed by the Marshalling Officer/Presenting Officer of the Management enquiry report was submitted holding the disputant workmen guilty of serious misconduct for their riotous and disorderly behaviour. On a mere perusal of the statements of the departmental witnesses and other materials laid before the enquiry officer, which are part of the enquiry proceeding file as marked Ext.-8, it is apparent that the finding of the enquiring officer is neither perverse nor the same can be stated to have not been based on legal evidence and the misconduct of the disputant workmen as alleged in the charge-sheet seems to have been established. Thus, on reappraisal of the evidence led before the domestic enquiry this Tribunal do not find any reason to differ with the findings of the domestic enquiry.

12. It is also strenuously contended on behalf of the disputant workmen that findings of the enquiry report and second show cause notice as to why major punishment shall not be inflicted were not served on them before they were dismissed from service by the Management on such enquiry report. The doctrine of natural justice requires supply of a copy of the enquiry officer's report. But as a settled principle whether prejudice has been caused or not on account of denial of the enquiry report and second show cause has to be considered on the facts and circumstances of each case. It is well settled that though supply of report by the enquiry officer is part and parcel of the natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order of dismissal. For that, the delinquent employee has to show prejudice. Unless he is able to show that non-supply of report of the enquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated and whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and the Hon'ble Apex Court has held that no rule of universal application can be laid down in that regard. In the above backdrops of settled principle when the facts and circumstances of the present case are examined, it is seen that the disputant workmen did not participate in the domestic enquiry seeking adjournments from time to time on some pretexts for which, the enquiry officer was compelled to proceed with the enquiry in their absence. When they defaulted on their own to take part in the domestic enquiry, it is hard to believe that any prejudice was caused to them for non-supply of such enquiry report and the above matter having been dealt elaborately in the findings of the preliminary issue, the contention does not seems to have any substantial force.

13. Coming to the point of quantum of punishment imposed/inflicted on the disputant workmen there is no serious dispute to the fact that as per sub-clause 9 & 10 of Clause-20 of the Certified Standing Order of the Management riotous and disorderly behaviour during the working hours at the establishment or any act subversive of disciplines and act of holding or attempting to hold meetings or conducting or attempting to conduct processions inside the company's premises without previous sanction of the Manager are misconduct and a workman found guilty of such misconduct may be removed or dismissed from service or penalized otherwise as mentioned in Clause 21 of the Certified Standing Order. It has been strenuously contended on behalf of the disputant workmen that the punishment of dismissal from service in a ex parte departmental enquiry is shockingly disproportionate to the misconduct allegedly committed by the disputant workmen. There is nothing on the record in regard to the past conduct of the disputant workmen to draw any adverse inference. Further, they are not provided with a copy of the enquiry report and given any opportunity to submit their explanation on the proposed punishment and as such, the order of dismissal should be vitiated and in the

meanwhile the disputant workmen having attained the age of superannuation should be reinstated notionally for enabling them to avail all financial benefits of their reinstatement and other consequential benefits. The submission is vehemently opposed by the learned counsel of the Management on a contention that as a settled principle the disputant workmen having been found guilty of serious misconduct for exhibiting riotous and disorderly behaviour should not be let out with any lesser punishment than the punishment of dismissal. It was submitted that any leniency towards such misconduct of such workmen would have serious impact on the discipline amongst the other workmen of the Management and keeping in view the gravity of the charges proved, no interference is warranted in the punishment.

14. Law is well settled that it is within the jurisdiction of the Tribunal/Labour Court to consider the nature of dereliction and also the quantum of punishment and to pass appropriate orders modifying or setting aside the same. The jurisdiction of the Industrial Court being wide under the reference under section 10 and it having been conferred with the powers to interfere into the quantum of punishment it could go into the nature of charges, so as to arrive at a conclusion as to whether the quantum of punishment was just and proper to the misconduct allegedly committed by the delinquent or the same is shockingly disproportionate. It has been settled that while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or to terminate the services of the workmen, the Tribunal does not act as a Court of Appeal and substitute its own judgement for that of the Management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice etc. on the part of the Management. It is propounded by the Hon'ble Apex Court in the Indian Aluminium & Co. Versus LC (1991) I LLJ 328, 333 where a workman has been dismissed or removed from service after a proper and fair enquiry on charges of violence, sabotage, theft or assault and if the Labour Court comes to the conclusion that the grave charges have been proved then the court will not have the power to order reinstatement of the delinquent worker. In the case of Sharada Prasad Onkarprasad Tiwari – Versus – Central Rly (1960) I LLJ 168, 170 (Bom) the Hon'ble Bombay High Court enumerated broadly cases of acts of misconduct, the commission of which would justify dismissal of the delinquent employee and as per the said pronouncement an abusive act or an act disturbing the peace at the place of his employment warrants dismissal. It is well settled that the power to set aside the order of discharge or dismissal and grant the relief of reinstatement or lesser punishment does not mean that in each and every case the Tribunal has got untrammelled power to interfere with the punishment. The power has to be exercised only when the tribunal is satisfied that the order of discharge or dismissal was not justified. The satisfaction of the tribunal is objective satisfaction and not subjective satisfaction. It involves application of mind by the tribunal to various relevant circumstances, like the nature of delinquency committed by the workman, his past conduct, the impact of delinquency on the employer's business as also the total length of service rendered by him. Furthermore, the tribunal has to consider whether the decision taken by the employer is just or not. It is only after taking all these factors into consideration, the tribunal can upset the punishment imposed by the employer. Further, law is well settled that when a charge of serious misconduct is established like the present one there should be no question of showing uncalled sympathy and reinstatement of the employee and the imposition of punishment should be left to the disciplinary authority, who on the one hand, was required to maintain discipline amongst the employees and to see that the morale of other employees is kept up and signals should not be sent out to the effect that any unruly behaviour having wider impact would be dealt with leniently. Keeping in view the above settled principles and the act of misconduct committed by the disputant workmen, it cannot be held that the action of dismissal was a malafide on the part of the Management or the same is shockingly disproportionate to the gravity of the misconduct of the workmen warranting any interference by the Tribunal.

15. For the reasons stated above it cannot be said that the dismissal of the disputant workmen by the Management was a victimization and the same is illegal and unjustified. At the same time it cannot be over-sighted that the disputant workmen did not avail opportunity to have their say on the enquiry report and the punishment and they are yet to make any appeal directly to their authority for taking a lenient view and for modification of the punishment of dismissal imposed on them. In the meanwhile they have attained the age of superannuation and they appears to have sufficiently punished on being dragged into the litigation for more than twenty years. They had worked for more than ten years for the Management. Keeping the above facts in view it is also felt just and proper to give an opportunity to the disputant workmen to move/make an appeal to their authority for modification of the punishment of dismissal to a lesser punishment, if any, like compulsory/voluntary retirement so as to enable them to avail retirement benefits and in case of their filing any representation/appeal the Management shall dispose of their representations without being influenced by the findings and comments made in this award.

16. The references are answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

**FINDINGS ON ISSUE NO. 1, WHETHER THE DOMESTIC ENQUIRY WAS CONDUCTED
FAIRLY AND PROPERLY AGAINST THE OPP. PARTY-WORKMEN ON
DATED 18.5.2016 FORMS PART OF THE AWARD**

This order is related to the issue of fairness and propriety of the domestic enquiry preceded to the action of the applicant-Management in dismissing the services of Shri Ajay Kumar Choudhury and Shri Raj Kumar Panda as the said issue is required to be decided preliminarily before giving findings on other issues and disposal of the application under section 33(2)(b) of I.D. Act (herein-after referred to Act) preferred by the applicant-Management for approval of their action in dismissing the Opp. Party-workmen above named.

2. The facts giving rise to the present order and the application preferred by the applicant-Management may be stated as follows:-

In a joint departmental enquiry the O.P.-workmen were issued with charges of committing serious misconduct on account of exhibiting riotous and disorderly behaviour on 18.05.1990 in place of their employment having led a mob to the office of the C.M.D., abused and manhandling the General Manager (Shri S.C. Mishra) and Shri A.S. Sidiq, D.G.M. Mines. Charges were also framed against them that on 19.05.1990 at about 11 A.M. they and others abused Mines Manager A.K. Das in filthy and obscene languages in the office premises. On 20.05.1990 at about 2.45 P.M. they along with others gave inflammatory speech against Shri Das and abused him in slang languages in front of his residence. It was also alleged in the charge-sheet that the Opp. Party-workmen left their place of work and loitered here and there without any authority to exhibit the above riotous and disorderly behavior. Before initiation of the departmental proceeding the Opp. Party-workmen were asked for explanations for committing such misconduct and they were placed under suspension. The Opp. Party-workman No. 1 submitted his explanation on 2.7.1990 whereas Opp. Party-workman No. 2 gave his reply on dated 30.06.1990. Having found the explanations unsatisfactory the applicant-Management initiated proceedings and appointed one Shri S. Mishra, retd. Deputy Labour Commissioner, Bhubaneswar, an outsider as Enquiry Officer. Shri S.K. Mohapatra, Personnel Officer of the Management was appointed as Marshalling/Presenting Officer. It is pertinent to mention here that the joint enquiry was conducted on the request and consent of the Opp. Party-workmen. A co-worker was allowed to represent the Opp. Party-workmen in the departmental proceedings on their request. Date was fixed for joint enquiry and the Opp. Party-workmen as well as Marshalling Officer were intimated in that regard. It is alleged by the applicant-Management that several adjournments were given to the Opp. Party-workmen in the departmental proceeding on their request on different pleas. After several adjournments the Enquiry Officer adjourned the enquiry to 31.01.1991 for presentation of witnesses on behalf of the Marshalling Officer. On that day when the Opp. Party-workmen did not participate in the proceeding on a plea of certain engagements the enquiry was conducted ex parte. Witnesses were examined on behalf of the applicant-Management on 30.1.1991 and on 31.1.1991 where-after the enquiry was closed. Enquiry report was submitted holding the Opp. Party-workmen guilty of charges framed against them except the charge of leaving the place of work without any authority. Taking into consideration the gravity of the misconduct committed by the Opp. Party-workmen the applicant-Management issued order of dismissal on 22.04.1991. It is also claimed by the applicant-Management that the dismissed Opp. Party-workmen were paid one month wages and application was moved under section 33(2)(b) of the Act for taking approval of the dismissal order on account of pending of an earlier industrial dispute before the conciliation officer.

3. Being noticed the Opp. Party-workmen have resisted the application contending that being the President and the General Secretary of the Rare Earth Employees' Union they were taking kin interest in protecting the interest of the workmen employed in the applicant-Management's office. Being office bearers of such Union they used to put-forth certain genuine demands of the workmen before the officers of the Management for which they became target of the Management. To pin-down them a parallel union was also created at the instance of the Management. A charge-sheet was issued with false and frivolous allegations to victimize them followed by a departmental enquiry with engagement of a henchman outsider as an Enquiry Officer. The departmental proceeding was conducted without specific, clear and unambiguous charges and without supply of documents and list of witnesses. When the Enquiry Officer was found tainted and influenced by the Management and his appointment was not in conformity with the rules of the Certified Standing Orders, request was made for change of the said Enquiry Officer. Despite such petition the enquiry was conducted by the same Enquiry Officer. They were set ex parte in the departmental proceeding even prayer was made for adjourning the enquiry on account of the Opp. Party-workmen being required to attend before the Labour Court and the CBI. The departmental enquiry was not conducted in conformity with the provisions enumerated in the Standing Order as the Standing Orders do not contemplates such enquiry being conducted through an outsider. Due opportunities were not accorded to them to defend and to put-forth their case in the departmental proceeding. Finding of the enquiry was totally perverse and order of dismissal was issued without service of a copy of such enquiry report to them and without seeking their explanation on such report. As such principle of natural justice was violated in conducting the departmental enquiry as much as in issuing the order of dismissal without issuance of a second show cause. It is their further stand that full subsistence allowance and wage/wages were not given to them. Being protected workmen their

dismissal without prior permission as contemplated under section 33(1) is out and out illegal and unjustified. They were removed from service out of victimization. The Opp. Party-workmen have made a prayer to disapprove their order of dismissal on the grounds mentioned above.

4. The applicant-Management has examined the Enquiry Officer, Presenting Officer as Management Witness Nos. 1, 2 and relied upon documents like xerox copy of the appointment order of enquiry officer, xerox copy of the notice to Union, xerox copy of time petition of the workman, two lists and order sheet dated 8.9.1990, order sheet dated 30.1.1991 holding the enquiry ex-parte, statement of five management witnesses recorded on 30.1.1991, statement of four management witnesses recorded on 31.1.1991, enquiry report dated 15.3.1991, forwarding letter of the enquiry report addressed to disciplinary authority, postal acknowledgement, letter dated 27.8.1990, letter dated 28.8.1990, certified standing order, copy of charge-sheet – A.K. Choudhury, Copy of charge-sheet, copy of charge-sheet of R.K. panda, copy of charge-sheet, explanation of A.K. Choudhury, Explanation of Shri R.K. Panda, explanatory note to Shri A.K. Choudhury, explanatory note of Shri R.K. Panda, order sheets maintained by the Enquiry Officer, Order of dismissal of Shri A.K. Choudhury, Order of dismissal to Shri R.K. Panda, Cheque with bank advices in respect of Shri A.K. Choudhury, Cheque with Bank advices in respect of Shri R.K.Panda, letter dated, letter dated 21.2.1991 addressed to General Secretary Rare Earth Employees Union with regard to declaration of protected workman, letter dated 13.6.1991 forwarding a copy of enquiry report to Shri A.K. Choudhury, particulars of payment of subsistence allowance, particulars of payment of subsistence allowance, particulars of payment of subsistence allowance and certified copy of judgement in G.R. Case No. 151/95 (marked as Ext. 1 to Ext. 24) in support of their application for approval of the dismissal order whereas, the Opp. Party-workmen have examined themselves and relied upon documents like copy of charge-sheet, copy of charge-sheet, copy charge-sheets, copy of charge-sheet, pay bill of Shri A.K. Choudhury, for the month of March, 1989, representation of Shri A.K. Choudhury, letter dated 25.7.1996 issued to Shri A.K. Choudhury, enclosure in Ext.-D, copy of circular dated 13.2.1987, copy of letter regarding payment of dues, pay slip for the month of February, 1990, copy of recognition letter dated 21.5.1983, copy of reply dated 2.1.1990, copy of reply dated 30.6.1990, copy of protest letter dated 25.8.1990, copy of letter dated 25.1.1991 for adjournment, certificate dated 30.1.1991 issued by the CBI, copy of enquiry report dated 23.8.1995, pay slip, particular dated 30.6.90, particulars dated 30.06.90 copy of list of protected workmen, copy of tripartite settlement dated 12.1.1994, copy of appeal dated 21.10.95, postal A.D., particulars of subsistence allowance, copy of notice dated 3.1.92, 11.8.97 of P.O., L.C., Jeypore. (marked Ext.- A to Ext.-T).

5. It is pertinent to mention here that earlier this Tribunal vide its order dated 25.11.1997 declined to approve the order of dismissal on the sole reason that the Opp. Party-workmen had suffered the consequences out of victimization. Though several other grounds had been raised by the Opp. Party-workmen in opposing the application of the applicant-Management for approval of their order of dismissal, the Tribunal did not give its finding on those objections. The applicant-Management preferred a Writ Appeal against such order of the Tribunal vide O.J.C. No. 17507/1997 in the Hon'ble High Court of Orissa which was dismissed on contest. As such the applicant-Management preferred Civil Appeal along with S.L.P. before the Hon'ble Apex Court. The Hon'ble Apex Court in its order dated 1.4.2014 set aside the order of this Tribunal as well as the order of the Hon'ble High Court and remitted back the matter for its fresh disposal observing that the Tribunal as well as the Hon'ble High Court have not gone into the questions on fairness of the departmental enquiry, whether the Management had passed the order of dismissal without making available a copy of the enquiry report and inviting show cause from the Opp. Party-workmen on proposed punishment, and without examining the contention raised by the Opp. Party-workmen that they are protected workmen in terms of Section 33(3) of the Act despite such questions are germane to the issue involved in the matter which ought to have been decided by the Industrial Tribunal. While remitting back the matter to this Tribunal for its fresh disposal the Hon'ble Apex Court have further noted that any observation made by the Hon'ble Court in the order of remittance shall have no bearing on the merit of the case and the parties are given liberty to raise all contentions before this forum.

6. Keeping in view the observations of the Hon'ble Apex Court this Tribunal vide its order dated 05.08.2014 settled the issues including the issue on fairness of the departmental proceeding and invited the parties to the dispute to put-forth their contentions. Further, it is not out of place to mention that during pendency of application for approval of the Management action two separate references under section 10 of the Act were received for adjudication whether the dismissal of the Opp. Party-workmen are legal and justified. On such reference two separate I.D. Cases bearing No. Tr. I.D. 126/2001 and I.D. 3/2006 have been registered and the same are pending for disposal as the references are the outcome of the dismissal order issued by the Management. As most of the issues involved in the reference cases and the present one are identical to the present one, order is passed for simultaneous hearing of the cases on the consent of the parties.

7. In view of principles set out by the Hon'ble Apex Court in the case of Neeta Kaplish –versus – Presiding Officer, Labour Court and Another and many other cases that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as preliminary issue whether the domestic enquiry as violated the principle of natural justice. The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under section 10 or by way of an application under section 33 of the

Act. Pursuant to such mandate of the Hon'ble Apex Court the issue of fairness and propriety of the departmental enquiry is being decided preliminarily by this order.

8. To avoid repetition it may be stated that the argument advanced by the learned counsel for the Opp. Party-workmen is nothing more or less than the pleadings raised in the show-cause of the Opp. Party-workmen. Besides it has been contended that though more than 30 persons had participated in the alleged demonstration, the applicant-Management had initiated action against only the present Opp. Party-workmen which itself vindicate that departmental enquiry was conducted only to victimize the present Opp. Party-workmen.

9. Keeping in view the pleadings and contentions advanced by the parties and the directions of the Hon'ble Apex Court while remitting back the matter I feel it just and proper to analyse and give my findings one by one on the points/issues raised by the parties on point of fairness of the departmental enquiry. Contentions have been raised on behalf of the Opp. Party-workmen that in view of the workmen being the President and the Secretary of Indian Rare Earth Employees Union by the relevant time and they being protected workman, the order of dismissal without prior permission as contemplated under section 33(1) of the Act is illegal. Admittedly, it is emerging from the evidence of the applicant-Management as well as the Opp. Party-workmen that Opp. Party Shri A.K. Choudhury and Shri R.K. Panda were the President and Secretary of Indian Rare Earth Employees Union and there were two separate registered Unions of the Employees. Management witness No. 2 has also admitted that the present workmen were the office bearers of the Union having majority employees. It is emerged from his evidence that no office bearer or employee of the Management were declared protected workman in the relevant period as well as to subsequent year. Though it is evident from the evidence of the Opp. Party-workmen witness that intimation was sent to the Management for declaring them protected workmen, no communication in that regard was received by them. Hence it can be safely inferred that the Opp. Party-workmen were not declared as "protected workmen" as contemplated under section 61 of the Rule. If there is any lapse on the part of the applicant-Management to declare them protected workmen, a remedy was available to them to raise a dispute before the labour machinery in that regard. If the provisions of Section 33 of the I.D. Act is read with the provisions enumerated in Rule 61 of the I.D. Rules the Opp. Party-workmen cannot be said protected workmen in order to avail the safeguard guaranteed to a protected workmen under section 33(1) of the I.D. Act. In that view of the matter the plea and contention raised by the Opp. Parties that their order of dismissal without prior permission is blatant violation of the provisions of the I.D. Act has no substantive force and as such approval to the action of the Management in dismissing the Opp. Parties cannot be refused on a suggestion that the action of the Management is covered by the provisions of Section 33(1) instead of Section 33(2)(b) of the I.D. Act.

10. It is the main claim of the Opp. Parties that the domestic enquiry was not conducted fairly and properly in as much as the Management so also the enquiry officer failed to provide documents, likely to be relied upon in the enquiry, along with the charge-sheet. Undisputedly the Opp. Parties-workmen were not supplied with the documents along with the charge-sheet before commencement of the departmental enquiry. But, it is emerging from the evidence of Enquiry Officer, who has been examined as Management Witness No. 1, that after being appointed as Enquiry Officer he issued notice to the Opp. Parties for their appearance on 08.09.1990 at 10 P.M. in the guest house of the applicant-Management and pursuant to such notice the Opp. Parties appeared before him. It is, further, emerging from his evidence more particularly from his cross-examination that the Management filed list of documents and list of witnesses on 08.09.1990 and he directed the Opp. Parties to file their documents. According to him Xerox copies of documents filed by the Management were sent to the Opp. Parties by regd. post with A.D. as they did not attend the enquiry adjourned to 24.09.1990. It is also not seriously disputed that the Opp. Parties Shri Choudhury submitted a letter before the Enquiry Officer on 16.10.1990 alleging that Xerox copies of certain documents were not visible, and as such copies thereof be transmitted to him. On such application the Enquiry Officer is found to have directed the Management to provide legible copies of the documents to the delinquent Opp. parties. The Enquiry Officer has further stated that on 20.11.1990 the Management representative had confirmed him about such supply of copies by producing the acknowledgement. It is further emerging from the evidence of the Management Witness No. 1 and 2 that the departmental enquiry was adjourned to different dates i.e. on 24.9.1990, 16.10.1990, 20.11.1990, 19.12.1990, 03.01.1991 and 16.01.1991 as the Opp. Parties did not appear but prayed for adjournments on different contexts including medical ground. The witness has also emphatically stated that after several adjournments when he was satisfied on 30.01.1991 that no useful purpose will be achieved in such adjournments he, proceeded with the enquiry making the Opp. Party-workmen set ex-parte. Contentions have been raised by the Opp. Party-workmen that on 30.01.1991 an application was sent to the Enquiry Officer on account of their pre-engagement and inability to attend the enquiry proceeding. Despite a prayer for adjournment the Enquiry Officer proceeded with the enquiry and examined the witnesses of the applicant-Management in their absence which exhibits biasness on the part of the Enquiry Officer.

11. On careful examination of the oral testimonies of the witnesses examined by the parties in this Tribunal it is seen that the delinquent workmen did not appear before the Enquiry Officer except on the first date of commencement of the enquiry and sought for adjournments. The Enquiry Officer seems to have afforded several opportunities to the

workmen having adjourned the enquiry on several occasions. On the application of the workmen order was passed for supply of legible copies of documents to them. When application was sent to the Enquiry Officer for adjournment of the enquiry to be held on 30.01.1990 no contention was raised for non-supply of legible or illegible documents. There is also nothing specific either in the pleadings or show-cause filed in the Tribunal or in the evidence of W.W.-1 that copies of which particular documents were not supplied to them as a result of which they can be stated to have been deprived of properly defended and thereby there was a violation of the principles of natural justice. It cannot also be over-sighted that the enquiry was concluded on 31.1.1990 and the Opp. Parties did not take any step on that day. The Opp. Party-workmen have also failed to file any document to show their pre-occupation on 30.01.1990 for which they were not in a position to attend the enquiry. It is evident that they did not submit any document before the Enquiry Officer while seeking adjournment on 30.01.1990. Hence, the Enquiring Officer cannot be presumed to have acted wrongly while proceeded with the enquiry in absence of the Opp. Party-workmen. They were allowed to have been represented through a co-worker. Had there been any genuine difficulty or pre-occupation, a representative of their choice could have attended the enquiry proceeding and put-forth the grievances of the workmen before the Enquiring Officer. Rather, it comes out that the Opp. Parties-workmen remained absent in the enquiry adjourned from date to date after their appearance in the first date of enquiry proceeding. Hence it cannot be said that the Opp. Party-workmen were denied opportunities to defend their case properly. On the other-hand it can be said that they failed to avail the opportunity accorded to them by virtue of several adjournments in the enquiry. The principles of natural justice require that notice of a proposed enquiry to be held should be given to the concerned person. Such principles do not require that even after giving notice if the concerned person remains absent, the enquiry should not be held in his absence. For the reasons mentioned above the departmental proceeding cannot be vitiated either on the ground of non-supply of documents or the reason of the departmental enquiry being held ex-parte i.e. in absence of the Opp. Party-workmen. The citations relied upon by the learned counsel of the Opp. Party-workmen with regard to the effect of non-supply of documents or the enquiry being conducted in back of the Opp. Party-workmen are not applicable to the present case in as much as the facts and circumstances of the present case is not identical to the circumstances in those cases.

12. Challenge has also been made to the departmental enquiry on a plea that the enquiry was not conducted in conformity with the provisions of Certified Standing Orders more particularly with conformity to Clause-22 as much as the orders do not provide appointment of an outsider as an Enquiry Officer. Full subsistence allowance as per the Standing Order was not provided to the Opp. Party-workmen during the period of their suspension. According to the learned counsel for the Opp. Parties the above grounds are sufficient to vitiate the departmental proceedings. On a close reading of the Standing Order it is found that there is no provision which prohibits the Management to appoint an outside officer/person as Enquiry Officer. It cannot be over-sighted that the Enquiry Officer was a Deputy Labour Commissioner (retd.) and no material is placed on behalf of the Opp. Party-workmen to show that he had any affinity or inclination towards the Management. On the other hand it is emerging from M.W.-2 that an outsider was appointed as Enquiry Officer since most of the officers of the Management were either witnesses or victims to the incident for which the Opp. Party-workmen were charge-sheeted. The language of "Officer" as mentioned in the Standing Order for appointment of Enquiry Officer does not confined to an Officer of the Management. Moreover an outsider is expected to be more impartial than an officer of the Management in such a departmental enquiry. No distinction can also be made between the power of an employee officer, who is employee of the Management and an outsider. If the Management is entitled to appoint an Enquiry Officer in either case, the appointee in his capacity as an Enquiry Officer would have the same power. In the above back-drops I do not agree with the contention of the Opp. Party-workmen that the departmental enquiry was defective ab-nitio on the count of appointment of an outsider as an Enquiry Officer or they were prejudiced by such appointment.

13. It has been further argued that despite a prayer for change of Enquiry Officer, the enquiry was conducted and such action on the part of the Enquiry Officer exhibits his biasness towards the Management. Generally a request for change of Enquiry Authority is decided not from the point of view of disciplinary authority but, from the angle of the employee concerned as to whether from the facts and circumstances of the case it could be said that it was possible for him to develop a reasonable apprehension of bias in the inquiring authority against him. Fanciful or imaginary claim or bias could not sustain the plea for change of the inquiring authority. All that is necessary is that whether the employee could contend of a reasonable apprehension in mind regarding impartiality of the inquiring authority. The test in this regard is whether a man of reasonable prudence, if placed in similar situation as that of the employee, would have thought the inquiring authority to be biased against him. There is nothing either in the evidence of the W.W.-1 or in cross-examination of M.W.-1 and 2 or any other papers relied upon by the Opp. Party-workmen to establish that the inquiry authority had ever acted against the interest of the Opp. Party-workmen while conducting the enquiry. Moreover, the enquiry record, which is exhibited as Ext.-8 as well as testimony of M.W.-1 and M.W.-2 clearly indicates that on no occasion the inquiring authority refused prayer of the delinquent workmen till he proceeded with the enquiry ex parte in absence of the Opp. Party-workmen on 30.1.1990 after coming to a conclusion that no further purpose will be held by adjourning the enquiry on the application of the Opp. Party-workmen. Further it is seen that on the request of Opp. Party-workmen direction was given for supply of documents and the enquiry was deferred on several occasions before the same was conducted ex-parte. Thus, there is nothing either in the disciplinary proceeding

file or evidence led in this Tribunal from which it can be inferred that in the departmental proceeding the enquiry officer had exhibited its conduct showing biasness towards the Management or acted upon having a prejudice mind against the delinquent Opp. Party-workmen. On the other hand the appointment of an outsider enquiry officer was just and proper in the given situation of the case on account of officers of the Management are stated to have witnessed the alleged riotous and disorderly behaviour of the Opp. Party-workmen. Therefore, there was no justification for the demand for change of the enquiry officer as claimed by the Opp. Party-workmen as well as their apprehension of bias in mind was not justified.

14. The initiation of departmental proceeding is also challenged on the ground of malafide intention on the part of the Management. Ordinarily an employee can be said to have been victimized if he is made victim or scape-goat and subjected to prosecution or punishment for his no fault or guilt. It is, therefore, manifest that if actual fault or guilt meriting the punishment is established, such action will get rid of the taint of victimization. Victimization is a serious charge by an employee against an employer and therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. As per settled principles the onus of establishing a plea of victimization is on the person pleading it. In this regard coming to the pleading and evidence of the Opp. Party-workmen it is found that the sole contention of the Opp. Party-workmen is that more than 30 persons participated in the alleged incidents for which they have been charge-sheeted. But, no departmental proceeding was initiated against others and departmental enquiry was conducted after they being suspended against only them as they were the President and the Secretary of the Union to which the Management had no liking.

15. It is seen from the pleadings and evidence of Opp. Party-workmen that neither it has been pleaded in the show cause nor it has been contended during the proceeding before the Tribunal that the findings of the enquiry officer or disciplinary authority about commission of alleged misconduct by the Opp. Party-workmen is totally perverse or the same is not based on the legal evidence. Moreover, mere perusal of the statements of departmental witnesses and other materials led before the enquiring officer, which are part of the enquiry proceeding file vide Ext.- 8 it is apparent that the findings of the enquiring officer is no way found perverse and the same is based on legal evidence. A reasonable person could have drawn the same conclusion that of the enquiry officer on those materials. It cannot be over-sighted that the jurisdiction of the Tribunal while considering an application for grant of approval under section 33-2(b) is limited and the same cannot be equated with that under section 10 of the Act. The Tribunal is only required to see whether a *prima facie* case is made out as regards to validity of the domestic enquiry. A *prima facie* case does not mean a case proved to be hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether *prima facie* case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgement for the judgement in question. In the departmental enquiry strict principles of evidence or strict principles of proof as applicable in criminal case is not required to be adopted. In the above back-drops mere perusal of the materials led before the enquiry officer does not suggest that the findings of the enquiry officer was perverse.

16. Therefore, it can be safely concluded that the enquiry officer as well as the disciplinary authority has bona fide come to the conclusion that the Opp. Party-workmen were guilty of misconduct for which they were charged. Further, on a plain reading of the charges levelled against the Opp. Party-workmen it is seen that the Opp. Party-workmen were charge-sheeted having allegedly led a mob of 30 persons or more on different occasions during the working hour and exchanged verbal words in slang languages with the C.M.D. and other officers of the applicant-Management and also manhandled the C.M.D in the incident held on 18.05.1990. Having allegedly led the mob the department does not seem to have committed any wrong for initiating departmental proceeding against the Opp. Party-workmen only. Their alleged action in the incident is distinguishable to the activities committed by other employees present in the mob. Therefore, the applicant-Management cannot be said to have conducted the enquiry only on the ground of victimization or for any grudge. Further, even if several persons are involved in an action amount to misconduct and department proceeding initiated against some of them on account of their extent of role in the alleged misconduct, such charge-sheeted employee have no right to ask for dropping the departmental proceeding on the ground of non-initiation of departmental proceeding against other employees. The charges framed in the charge-sheet are not ambiguous and the same specifies the acts committed by the delinquent Opp. Party-workmen which amounted to misconduct. Nothing has been elicited either from the cross examination of the Management witnesses or from the voluminous documents led by both the parties to show that the alleged departmental proceeding was result of a trade union activity of the Opp. Party-workmen. In view of the above facts and circumstances it is hard to accept that the departmental enquiry leading to dismissal of the Opp. Party-workmen was a matter of victimization.

17. The other contention raised by the Opp. Party-workmen challenging the fairness of the enquiry is that they were not provided subsistence allowance as required under the provisions of rules and regulations. According to him certain prevailing allowances were not given to him along with subsistence allowance and as a matter of principle the enquiry

was not fair and proper. On a close reading of the evidence led before this Tribunal it is found that they were given subsistence allowance as prescribed basing upon their basic pay and dearness allowance. The other allowances are provided to the employees on duties. Admittedly the Opp. Parties workmen were under suspension and they were not discharging any official duties. In that event they are not entitled to receive those allowances as claimed by them. Even if it is accepted that they were paid less than a small fraction of amount then the actual subsistence allowance to be calculated on the basis of their pay and dearness allowance, the same cannot vitiate the departmental enquiry as non-payment of that small fraction of amounts did not deprive them to defend themselves in the departmental enquiry and deprival of such small amount did not cause any prejudice to them.

18. Vehement argument has been advanced challenging the fairness of the departmental enquiry with reliance upon the settled principle of **Hon'ble Apex Court enunciated in the case of Punjab National Bank Limited – Versus – All India Punjab National Bank Employees Federation and Another in Civil Appeal No. 519, 520 and 521 of 2958, Union of India and others –Versus Mohd. Ramzan Khan in Civil Appeal No. 571/1985, Punjab National Bank and others –versus- Kunj Behari Mishra & Another in C.A. No. 1884/1993 with C.A. No. 7433/1995, Managing Director, ECIL, Hyderabad – versus- Managing Director, ECIL, Hyderabad in Civil Appeal No. 3056/1991 with SLP (Civil) No. 4273/1986** that dismissal of the Opp. Party-workmen in the instant case is totally illegal and violative of principles of natural justice as neither the Opp. Party-workmen were served with the enquiry report nor second show cause was invited from them before taking such action of dismissal. The learned counsel appearing for the applicant-Management, per contra, has contended that Standing Orders of the applicant-Management does not contemplate such supply of enquiry report or service of show cause notice before inflicting major punishment in a departmental proceeding. It cannot be disputed that as per the settled principles of Apex Court supply of report of the enquiry officer is part and parcel of natural justice and as such, such report must be furnished to the delinquent employee. Hence the argument led by the leaned counsel for the applicant-Management does not seem to be hold good in the present context. However, in a catena of decision including in the case Haryana Financial Corporation – Versus-Kailash Chandra Auhuja reported in 203 1998 FLR 905 SC it has been set out by the Hon'ble Apex Court that though supply of report of enquiry officer is part and parcel of natural justice, failure to supply would not automatically result in quashing the order of dismissal. The delinquent employee has to show prejudice for such non-supply of enquiry report and second show cause. Enquiry report is furnished to the delinquent as he has further rights after completion of enquiry i.e. (i) the right to show cause against the findings in the report; and (ii) the right to show cause against the proposed penalty which are independent of one and another. The former is the right to prove that the enquiry is unfair or invalid and the workman is not guilty of misconduct as alleged while the later is the right to show that no penalty or lesser penalty should be imposed even he is held to be guilty. It cannot be over-sighted in the case at hand that the Opp. Party-workmen remained absent during the entire enquiry proceeding after making their appearance at the initial stage after being noticed by the enquiry officer and supplied of copies of documents and list of witnesses. When they did not participate in the enquiry on their own accord on certain pleas, they has no right to say that the enquiry is unfair or invalid and they were not supposed to be found guilty of alleged misconduct or the findings of the enquiry officer was perverse in view of a reasonable person could have not come to the same conclusion on the materials led before the enquiry officer. Similarly they do not seem to have no-thing to say on the punishment likely to be warranted on the alleged misconduct. In that event they cannot be said to have been prejudiced for non-supply of enquiry report or second show cause. That apart the Opp. Party-workmen neither in their pleadings nor in their contention have explained as to how they were prejudiced for such non-supply of the report or second show cause when they were charge-sheeted and found guilty for serious misconduct warranting dismissal as contemplated in the Standing Order. In that view of the matter the citations relied by the Opp. Party-workmen are not applicable in the present case. Hence principles of natural justice cannot be said to have been violated in the instant case to vitiate the departmental proceeding.

FINDINGS

19. For the reasons stated above an irresistible conclusion can be drawn that no principles of natural justice seems to have been violated while conducting the departmental enquiry warranting to vitiate the departmental proceedings. Hence the preliminary issue is answered affirmatively in favour of the applicant-Management.

Dictated & Corrected by me.

Dt. 18.5.2016

B. C. RATH, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1487.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कम्मबाटा एयर इंडिया चार्टर्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 1/11 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-11012/15/2015-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1487.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai (Ref. No. 1/11 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Air India Charter Limited and their workmen, which was received by the Central Government on 08.06.2017.

[No. L-11012/15/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : JUSTICE SURENDRA VIKRAM SINGH RATHORE, Presiding Officer

REFERENCE NO.CGIT-1/11 OF 2015

Parties:

Employers in relation to the management of

Air India Charter Limited

And

Their workmen

Appearances :

For the management : Mr.Lancy D'Souza, Adv.

For the second party workmen : None present.

State : Maharashtra

Mumbai, dated the 12th day of May, 2017

AWARD

- As per Schedule of the Reference, the following question was referred to this Tribunal.

“Whether the dispute raised by Hawai Karmachari Sena against the Management of M/s.Air India Charters Ltd. over seeking transfer of Smt. Dipti Kaparia, Staff No. 14346, Ms. Vidya Gawai, Staff No. 15332 and Smt. Bhakti Chauhan, Staff No. 15333 from Cochin base to Mumbai base is legal and justified? If so, what relief the applicant is entitled to?”

2. Thus by Reference, the matter of three workmen regarding their transfer from Cochin to Mumbai base was raised. Statement of claim was filed by the union whereby only the case of Dipti Kanparia was espoused and the case of the other two workmen namely, Bhakti Chauhan Vidya Gawai was not espoused as Vidya Gawai had resigned from the employment and the Union had no instruction from her and the worker has not continued her membership with the union. Likewise, the other workman Bhakti Chauhan was on maternity leave and she also failed to give any instruction to the union and has also not continued her membership with the union. Hence, the Union in its statement of claim has only espoused the cause of Dipti Kaparia.

3. The dispute was only with regard to her transfer from Cochin to Mumbai base. Today on behalf of the management an application has been filed with the prayer that this case be finally disposed of because the contract of Airline Attendant Dipti Kaparia came to an end on 31.1.2016 and she has entered into a fresh contract with the first party as Airline Attendant on fresh fixed term contract basis for a period of 3 years commencing from 1.2.2016 to 31.1.2019 and her fresh appointment is at the Mumbai base. She has accepted the terms and conditions of the fresh fixed term contract dated 12.3.2016. Copy of the said contract entered between the rival parties has also been filed which is signed by Dipti Kaparia.

4. Thus, this reference was espoused only with regard to Dipti Kaparia and her grievance that she was victimized by not transferring her to Mumbai base comes to an end in view of the fresh contract whereby she has been posted at Mumbai base for a period of 3 years. It appears, that because of this reason Dipti is not contesting the case as no one is present to oppose this application on her behalf. None is appearing on behalf of the workman for the last six dates. Thus in view of this application supported by fresh agreement between the workman and the management the dispute has rendered infructuous by lapse of time. So there remains nothing in this reference. There is no use in keeping it pending as it has become infructuous.

5. Reference is answered accordingly.

JUSTICE SURENDRA VIKRAM SINGH RATHORE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1488.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कम्बाटा एविएशन प्राईवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 106/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.06.2017 को प्राप्त हुआ था।

[सं. एल-20013/1/2017-आईआर (सी -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1488.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi (Ref. No. 106 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Cambata Aviation Pvt. Ltd. and their workmen, which was received by the Central Government on 16.06.2017.

[No. L-20013/1/2017-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE SH. HARBANSK KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 106/2015

M/s Cambata Aviation Pvt. Ltd.
IGI Airport, Terminal 2,
Line Maintenance, Block "A",
New Delhi - 110037

Versus

Mr. Balbir Singh Thakur,
S/o Mr. Baldev Singh Thakur
House No. 179, Masjid Moth
New Delhi - 110048

NO DISPUTE AWARD

On 30.07.2015 a fresh application under section 33-(2)(b) of ID Act, 1947 moved on behalf of the applicant/management of Cambata Aviation Pvt. Ltd. New Delhi against Sh. Balbir Singh Thakur (respondent/workman). Which was register as ID. No. 106/2015 and notice to respondent/workman was issued for filing of reply on 14.09.2015.

Several opportunities to respondent/workman given to file reply/written statement. But respondent/workman failed to file reply/written statement. Hence his right to file reply/written statement was closed on 23.11.2016. And case was ordered to proceed ex-parte against workman. And 16.01.2017 was fixed for ex-parte evidence of Cambata Aviation Pvt. Ltd.

Several Opportunities has been afforded to management of Cambata Aviation to adduce its ex-parte evidence. But it failed to adduce any evidence.

Hence on 24.04.2017 I closed ex-parte evidence of management of Cambata Aviation Pvt. Ltd. and reserved this No Dispute Award.

To pass no dispute award I perused the record. Which shows that management of Cambata Aviation Pvt. Ltd.. through his application under section 33-(2)(b) of ID Act, 1947 prayed as follow:-

“In view of the foregoing, the management most respectfully prays that this Hon’ble Tribunal may kindly be pleased to grant necessary approval in respect of the action of the management of awarding the penalty of removal from service to the workman vide letter No. CAPL/PER/1024/2015 Dated 30 July 2015 under provisions contained in Section 33(2)(b) of Industrial Dispute Act, 1947 on the basis of cogent documentary evidence available with the management against the workman.

Any other relief which this Hon’ble Tribunal may deem fit and proper in the interest of justice, be granted in favour of the management.”

Aforesaid prayer of management of Cambata Aviation can not be granted in want of its evidence.

In this background application of management against respondent/workman is liable to be dismissed.

Which is accordingly dismissed.

“No Dispute Award” is accordingly passed.

Dated:-26.04.2017

HARBANSHEK KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1489.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जैट एअरवेज इण्डिया प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/56 ऑफ 2013) का प्रकाशित करती है, जो केन्द्रीय सरकार को 16.06.2017 को प्राप्त हुआ था।

[सं. एल-11012/30/2003-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1489.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai (Ref. No. 2/56 of 2013) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Jet Airways India Pvt. Ltd. and their workmen, which was received by the Central Government on 16.06.2017.

[No. L-11012/30/2003-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/56 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M/s. Jet Airways (India) Pvt. Ltd.,
IIIrd Floor, S.M. Centre,
Andheri Kurla Road, Marol Naka,
Andheri [E], Mumbai

AND

THEIR WORKMEN

The General Secretary,
Bharatiya Kamgar Karmachari Mahasangh,

Navalkar Lane, 1st Floor,
Prarthana Samaj, Girgaon,
Bhandup, Mumbai – 400 004.

APPEARANCES:

FOR THE EMPLOYER : Mr. Abhay Kulkarni, Advocate

FOR THE WORKMEN : Mr. A.P. Kulkarni & Mr. M.D.Nagle, Advocates

Mumbai, dated the 30th March, 2017.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-11012/30/2003 – IR (C-1) dated 12.03.2004. The terms of reference given in the schedule are as follows :

“Whether the Bharatiya Kamgar Karmachari Mahasangh had raised a demand on the Management of M/s. Jet Airways that Shri Anchekar Sadanand and other 168 workmen whose names are given in the list be reinstated in the service from the date from which they have been removed from the services as also full back wages, continuity of service and all other benefits be made available to them. It is justified and legal ? If yes, then what are the reliefs the aforesaid workmen are entitled for ??”

2. The present reference is in respect of 169 workmen. The list of concerned 169 workmen showing their names, Staff no., post held, date of joining, date of termination orders, dates of actual termination etc. is as per Annexure – Ex. ‘T’ which is given below:

Sr. No.	Name of the workmen	Staff No.	Post Held	Date of joining	Date of Ter. Order	Date of Termination
1.	Aanchekar Sadananad	JA-8452	Loader, Cleaner	11/1/99	22/1/03	6/2/03
2.	Adhav Ashok	JA-9942	Loader, Cleaner	4/9/2000	16/12/02	1/1/03
3.	Amber Santosh	JA-8392	Loader, Cleaner	21/11/98	18/1/03	3/2/03
4.	Annareddy Suresh	TE-00256	Loader, Cleaner		8/11/02	23/11/02
5.	Bame Vinayak	JA-8379	Loader, Cleaner	20/11/98	6/1/03	21/1/03
6.	Bamne Arvind	JA-8648	Loader, Cleaner	14/7/98	15/11/02	30/11/02
7.	Bata Sandeep	TE-00224	Loader, Cleaner	18/5/01	18/10/01	2/11/02
8.	Belekar Santosh	JA-8724	Loader, Cleaner	20/12/98	6/1/03	21/1/03
9.	Betkar Prakash	TE-00241	Loader	12/12/01	31/10/02	15/11/02
10.	Bhagat Narayan	JA-8403	Loader, Cleaner	10/3/99	16/1/03	31/1/03
11.	Bhalerao Rajesh	TE-00234	Loader, Cleaner	19/04/02	18/10/02	2/11/02
12.	Bhalerao Ramesh	JA-9695	Loader, Cleaner	4/8/00	23/1/03	7/2/03
13.	Bhise Ratnakar	JA-8483	Loader, Cleaner	1/1/99	14/12/02	29/12/02

14.	Chavan Ravindra	TE-00251	Loader, Cleaner	2/1/02	8/11/02	23/11/02
15.	Chawda Ramesh	JA-8657	Loader	25/1/99	7/12/02	21/1/03
16.	Chikate Pravin	JA-8653	Loader, Cleaner	1/8/98	7/12/02	31/12/02
17.	Chillivari Shrihari	JA-8485	Loader, Cleaner	3/9/98	8/11/02	23/11/02
18.	Chowdhari Santosh B	JA-11555	Driver	29/4/02	1/2/03	16/02/03
19.	Dalvi Mahesh	JA-10161	Loader	18/12/00	11/12/02	26/12/02
20.	Dandge Umesh	JA-8360	Loader	25/12/98	13/1/03	28/1/03
21.	Desai Prashant	JA-10189	Loader	30/12/02	23/12/02	7/1/03
22.	Deshmukh Prashant	JA-10404	Loader	12/2/01	6/2/03	21/2/03
23.	Dhuri Nandkumar	JA-8477	Loader	25/1/99	15/12/02	30/12/02
24.	Drave Ramesh	JA-8189	Driver	30/10/99	12/2/03	27/2/03
25.	Gaikwad Santosh R.	JA-10502	Loader	1/3/01	15/11/02	30/11/02
26.	Ghatule Hemant	JA-9989	Loader	1/3/01	3/1/03	18/1/03
27.	Gholam Atmaram M	JA-8180	Driver	24/6/99	5/2/03	20/2/03
28.	Gholap Santosh P	JA-8843	Loader	14/3/99	18/12/02	2/1/03
29.	Ghule Suresh S	JA-10407	Driver	10/2/01	5/2/03	20/2/03
30.	Gogalia Sunil	JA-9944	Loader	27/9/00	17/12/02	02/01/03
31.	Gosavi Ashok	JA-8369	Loader	31/12/98	7/11/02	22/1/02
32.	Gupta Omprakash	JA-8547	Loader	12/12/98	20/11/02	5/12/02
33.	Gurav Mangesh	TE-00235	Loader	1/6/01	18/10/02	2/11/02
34.	Hatim Prakash	TE-00265	Loader	20/5/02	19/11/02	4/12/02
35.	Ibhad Sunil	JA-10343	Loader	30/1/02	24/1/03	8/2/03
36.	Jadhav Anant Shankar	JA-10185	Loader	15/12/00	13/12/02	28/12/03
37.	Jadhav Bhagvan	TE-00236	Loader	6/12/01	18/10/02	2/11/02
38.	Jadhav Rajesh	JA-10408	Driver	10/2/01	6/2/03	21/2/03
39.	Jadhav Sandesh	JA-10402	Loader	10/2/01	5/2/03	20/2/03
40.	Jadhav Sandip	JA-8380	Loader	20/11/98	8/1/03	23/1/03
41.	Jadhav Satish	JA-10501	Loader	1/3/01	25/11/02	10/12/02
42.	Jagtap Rakesh	JA-9359	Loader	15/5/00	18/12/02	2/1/03
43.	Jagtap Suhas	TE-00225	Loader	13/11/01	18/10/02	2/11/02
44.	Jaiswal Santosh R.	JA-8378	Loader	20/11/98	13/1/03	28/1/03
45.	Jumare Sanjay	JA-9698	Loader	8/8/00	28/1/03	12/2/03

46.	Kadam Amol S.	TE-00253	Loader		8/11/02	23/11/02
47.	Kadav Sameer M	JAP-8491	Driver	16/2/99	11/2/03	26/2/03
48.	Kale Arun	JA-9699	Loader	8/8/00	28/10/02	12/11/02
49.	Kamble Sachin	TE-00257	Loader	14/5/02	18/11/02	3/12/02
50.	Kamble Shashikant S	TE-00219	Loader	18/10/01	18/10/02	2/11/02
51.	Karbhari Vijay	JA-8398	Loader	14/8/99	28/10/02	12/11/02
52.	Kedare Ashutosh	JA-10403	Loader	10/2/01	8/11/02	23/11/02
53.	Khan Imran	JA-8725	Loader	1/11/99	10/1/03	25/1/03
54.	Khan Yakub	JA-9772	Loader	15/11/00	15/11/02	30/11/02
55.	Khandekar Dilip	JA-9355	Loader	15/6/00	21/12/02	5/1/03
56.	Khargaonkar Ashok C	JA-11551	Driver	26/4/02	28/1/03	12/2/03
57.	Kini Chetan	JA-8496	Loader	31/3/99	15/1/03	30/1/03
58.	Kini Richard	TE-00254	Loader			
59.	Kondivilkar R	JA-10166	Loader	18/12/00	18/12/02	12/1/03
60.	Koregaonkar Santosh	JA-10119	Loader	07/12/00	29/11/02	14/12/02
61.	Kshirsagar Bharat	JA-10454	Driver	22/2/01	19/2/03	6/3/03
62.	Kulkarni Vinayak	JA-10405	Loader	12/12/01	7/2/03	22/02/03
63.	Kulye Mahesh A	JA-8390	Loader	21/11/98	19/1/03	3/2/03
64.	Kulye Sanjay	JA-8479	Loader	1/9/99	11/11/02	26/11/03
65.	Kumbhar S.L.	JA-8357	Loader	25/9/98	10/1/03	25/1/03
66.	Kurup Vinay	JA-8404	Loader	10/3/99	17/1/03	1/2/03
67.	Lad Amol Appa	JA-9358	Loader	15/5/00	17/12/02	1/1/03
68.	Lopies Vijay	JA-8187	Loader	24/6/99	8/2/03	23/2/03
69.	Mahapure Dilip	JA-8460	Loader	03/09/98	28/10/02	12/11/02
70.	Mangela Manish	JA-8362	Loader	25/12/98	13/1/03	28/1/03
71.	Manjrekar Ashish	JA-8647	Loader	21/3/99	1/12/02	16/12/02
72.	Mayekar Jitendra	TE-00252	Loader	6/6/01	8/11/02	25/11/02
73.	Meher Hemchandra T.	JA-8841	Loader	27/4/98	15/12/02	30/12/02
74.	Menezes Mathew	JA-8466	Loader	25/1/99	8/11/02	23/11/02
75.	Mhadeshwar Vinayak	JA-9481	Loader	11/3/99	24/12/02	8/1/03

76.	Mhatre Sachin B.	JA-9493	Loader	27/4/00	13/1/03	28/1/03
77.	Mirashi Sanjay	JA-8650	Loader	21/3/99	1/12/02	15/12/02
78.	Mishra Rakesh	JA-9354	Loader	15/5/00	25/12/02	9/1/03
79.	Mishra Shyam Naraya	JA-8470	Loader	25/1/99	27/1/03	11/2/03
80.	More Dashrath	JA-8399	Loader	27/3/02	3/11/02	18/11/02
81.	More Jitendra M	JA-8456	Loader	16/2/99	31/1/03	15/2/03
82.	More Subhash Naraya	JA-9991	Loader	9/10/00	15/1/03	30/1/03
83.	Murkar Sunil	JA-8549	Loader	10/7/98	23/11/02	8/12/02
84.	Murugan U	JA-8455	Loader	13/9/98	23/1/03	7/2/03
85.	Pagare Sunil	JA-7868	Driver	10/2/99	11/2/03	26/2/03
86.	Palande Rajendra J	JA-10345	Loader	23/1/01	24/1/03	8/2/03
87.	Panchal Ramakant	JA-9770	Loader	25/8/00	15/11/02	30/11/02
88.	Pandey Sryakumar	JA-8655	Loader	25/1/99	7/12/02	22/12/02
89.	Parab Shankar	JA-8521	Loader	10/7/98	19/11/02	4/12/02
90.	Parab Shrikrishna	JA-8402	Loader	1/2/99	18/1/03	2/2/03
91.	Patil Babu	JA-8454	Driver	10/9/99	20/2/03	7/3/03
92.	Patil Jatin	JA-8840	Loader	15/3/99	11/12/02	26/12/02
93.	Patil Sanjay ABA	JA-8353	Loader	25/12/98	13/1/03	28/1/03
94.	Patil vivek		Driver			
95.	Pawar Rajendra	JA-8649	Loader	25/1/99	30/11/02	25/12/02
96.	Pawar Raju L	JA-9363	Loader		25/12/02	9/1/03
97.	Pawar Shekhar		Loader			
98.	Pawar Yogesh	JA-8892	Loader	16/11/98	15/12/02	30/12/02
99.	Pawaskar Hemant	JA-9480	Loader	12/5/00	24/12/02	8/1/03
100	Pawaskar Vinayak	JA-9479	Loader	12/5/00	25/12/02	9/1/03
101	Pednekar Sudesh	JA-9700	Loader	8/8/00	27/1/03	11/2/03
102	Phalsamkar Sunil R.	JA-9345	Driver	11/5/00	6/2/03	21/2/03
103	Phansekar Nitin	JA-8482	Loader	20/12/98	11/11/02	26/11/02
104	Pisaikar Pritam	JA-8451	Loader	13/9/98	24/1/03	8/2/03
105	Pise S.R.	JA-9492	Loader	3/7/00	24/12/02	8/1/03
106	Poojari Harishchandra	JA-8492	Loader	21/3/99	14/11/02	29/11/02

107	Poyrekar Jivan J	JA-9089	Operator	15/3/99	28/2/03	13/3/03
108	Pyarelal J.	JA-8459	Loader	18/1/99	21/1/03	5/2/03
109	Rade Pravin M.	JA-8495	Loader	14/4/98	15/11/02	30/11/02
110	Radheshyam	JA-8463	Loader	3/1/98	1/2/03	16/2/03
111	Rafique Mohammed	JA-10120	Loader	7/1/00	30/11/02	15/12/02
112	Raitya Surinder	JA-8484	Loader	10/7/98	8/11/02	23/11/02
113	Rajak Keshavlal	TE-00237	Loader	17/4/01	31/10/02	15/11/02
114	Ram Shyamsunder	TE-00218	Loader	26/11/02	18/10/02	2/11/02
115	Rane Mangesh	JA-8400	Loader	26/12/98	15/1/03	30/1/03
116	Rane S.B.	JA-9488	Loader	20/5/00	25/12/02	9/1/03
117	Rasam Santosh	JA-8659	Loader	29/12/98	10/12/02	25/12/02
118	Rawat Aanand	JA-9482	Loader	13/5/00	4/2/03	19/2/03
119	Salap Atmaram	JA-8472	Loader	22/3/99	5/2/03	20/2/03
120	Salve Gautam	JA-9483				
121	Sarsar Krishnakumar	JA-8525	Loader	17/11/98	15/11/02	30/11/02
122	Satam Ashok	JA-9356	Loader	10/5/00	18/12/02	2/1/03
123	Satam Suresh	JA-8359	Loader	25/9/98	12/1/03	27/1/03
124	Satpute Prakash	TE-00232	Loader	6/12/01	18/10/02	2/11/02
125	Sawant Mangesh S.	JA-10525	Loader	12/3/01	9/12/02	24/12/02
126	Sawant Nandkumar	JA-9027	Loader	11/1/00	23/12/02	7/1/03
127	Sawant Nilesh	JA-9946	Loader	4/10/00	17/12/02	1/1/03
128	Sheikh Farukh A.	JA-8182	Driver	23/6/99	5/2/03	20/2/03
129	Sheikh Gulab	JA-8546	Driver	10/9/99	20/2/03	7/3/03
130	Sheikh Nizam	JA-8535	Loader	10/3/99	22/1/03	6/2/03
131	Sheikh Shahnawaz	JA-9988	Loader		2/1/03	17/1/03
132	Sharma Ajay	TE-00222	Loader			
133	Shelar Raj	JA-10187	Loader	10/12/00	4/11/02	19/11/02
134	Shetty Manjunath	JA-8654	Loader	4/8/98	5/12/02	20/12/02
135	Shetty Paresh	JA-8382	Loader	19/11/98	17/1/03	1/2/03
136	Shinde Anil	JA-8652	Loader	26/3/99	7/12/02	22/12/02
137	Shinde Deepak	JA-10406	Driver	10/2/01	6/2/03	21/2/03
138	Shinde Hanuman	JA-8462	Driver	20/8/99	27/1/03	11/2/03
139	Shinde Ketan	TE-00255	Loader	10/5/02	9/11/02	24/11/02

140	Shinde Vijay	JA-10132	Loader	11/12/00	30/11/02	15/12/02
141	Shingh Azadkumar	TE-00123	Loader			
142	Shintre Vaibhav	JA-8397	Loader	14/8/99	21/1/03	5/2/03
143	Shirke Sandeep	JA-8461	Loader	25/1/99	14/12/02	30/12/02
144	Sitapure Shivaji	TE-00233	Loader	29/8/01	18/10/02	2/11/02
145	Sonavane Krishna	JA-8661	Loader	4/9/98	10/12/02	25/12/03
146	Sunsuna Vijay	JA-8401	Loader	10/12/98	22/1/03	6/2/03
147	Sutar Sandeep	JA-8891	Loader	10/3/99	16/12/02	1/1/03
148	Tammut Arjun	JA-8488	Loader	25/1/99	15/12/02	30/12/02
149	Tare Prashant	JA-8493	Loader	15/09/98	15/1/02	30/1/02
150	Tawde Sanjay Kashinat	JA-8523	Loader	10/7/98	20/11/02	5/12/02
151	Tayade Ravikant	JA-8504	Driver	8/9/99	20/2/03	7/3/03
152	Teli Liladhar	JA-10163	Loader	16/12/00	9/12/02	24/12/02
153	Tiwari Anjani Kumar	JA-8396	Loader	13/8/99	21/1/03	5/2/03
154	Tripathi Ashok	JA-8395	Loader	5/5/99	22/2/03	9/3/03
155	Tulaskar Rajesh	JA-9491	Loader	23/5/00	18/12/02	3/1/03
156	Ubale Rahul	JA-9771	Loader	25/8/00	15/11/02	30/11/02
157	Ubale Shekhar	JA-10162	Loader	16/12/02	9/12/02	24/12/02
158	Upadhyay Vijay	JA-8689	Loader	1/10/99	13/12/02	28/12/02
159	Utekar Umesh	JA-9489	Loader	23/5/00	9/12/02	24/12/02
160	Utekar Vikas S.	JA-8381	Loader	19/11/98	8/1/03	23/1/03
161	Vaidya Dinesh A.	JA-8656	Loader	25/03/99	6/12/02	21/1/03
162	Wagh Dattatray	JA-8548	Driver	15/9/99	28/2/03	15/3/03
163	Waghmare K.M.	TE-00230	Loader		18/10/02	2/11/02
164	Wandekar Sanjay	JA-8185	Driver	24/6/99	9/2/03	24/2/03
165	Yadav Harishankar	JA-8024	Loader	6/8/98	15/2/03	2/3/03
166	Yadav Pandit G.	JA-8072				
167	Yadav Ramaasare	JA-8476	Loader		8/11/02	23/11/02
168	Yadav Sameer	JA-8510	Loader	3/8/98	20/11/02	5/12/02
169	Yadav Sampat	JA-9087	Loader		28/10/02	22/11/02

3. In view of Order dated 14.10.2013 vide No. Ref. CGIT-24/04/ Transfer/675/13, this reference has been transferred to this tribunal as per letter No. L-11012/30/2003-IR(C-1) dated 27.09.2013.

4. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives. Second party union filed statement of claim Ex.4 and amended statement of claim Ex.19.

According to the Second party union, first party company is engaging in the business and activity of flying aircrafts all over India. It is also engaged in the business of transporting Air cargo in addition to passenger services.

5. According to the union, workmen concerned in the present reference are employee by the first party company at Old Airport i.e. Santacruz Airport, Opp. to Terminal I-B. At Terminal I-B there are about 3/6 Departments such as Engineering, Ground Support Division, Operations, Cargo Department, Cabin Appearance Dept. etc. i.e. Cleaning Dept., Customer Service Dept. The first party company is carrying out activities of repairing and maintaining activities i.e. repair and maintenance of Aircrafts. Similarly, the activities of cleaning are also carried out at the said place. The first party company is thus an Industrial Establishment under Chapter V-B of the I.D. Act, 1947. It is carrying out the activities which partake the character of "Manufacturing Activities".

6. According to the union, the work which the concerned workmen were doing and for which they were appointed is integral part of day to day activity of the first party company. The said work is of permanent, perennial and regular nature. The workmen concerned were employed as Loaders-cum-Cleaners, Drivers and Operators. Though the workmen concerned were treated as temporary workmen, they were doing the work of permanent nature like other permanent Loaders-cum-Cleaners, Drivers and Operators employed by first party company. They were working on the permanent post. These posts are not of temporary or casual nature. In any event having worked for 3 months such employees had acquired, the status of atleast the probationers and as such the concerned workmen were acquired to be made permanent in terms of order Nos. 2(b) and 2 (c) of the Model Standing Orders (Central) framed under Industrial Employment (Standing Orders) Act, 1946.

7. According to the union, the first party company itself had put up a notice dated 23.7.2002 inter-alia taking the decision to regularize the employment of the concerned workmen who had put up minimum one year service. However, instead of making them permanent, management has illegally and abruptly removed them from service.

8. It is the case of the union that they had given strike notice dated 22.10.2002 to the management of the first party company as per section 22 (1) of the I.D. Act, 1947. They had given the detailed statement of the reasons as to why the union were constrained to go on strike w.e.f. 5.11.2002. All the reasons were specifically and cogently mentioned in the strike notice dated 22.10.2002. After issuance of strike notice the conciliation Officer (Central) had intervened in the matter and infact no strike commenced. The first meeting was fixed before the Conciliation Officer (Central) on 31.10.2002. Thereafter the Conciliation Officer had conducted proceedings. However, before issuance of strike notice dated 22.10.2002 the management of first party company terminated the services of 22 workmen abruptly and illegally. The first party company had also filed the writ petition bearing WP No. 2127 of 2002 against the union and others before the Hon'ble Bombay High Court and on 25.9.2002, Division Bench of Hon'ble Bombay High Court was pleased to pass the orders in the said writ petition observing that "In case any employee or employees represented by the First Respondent – Union is / are terminated by the petitioners, the said termination order shall come into effect after two weeks from the date of service of the said order on the concerned employee."

9. According to the second party union, the first party company has terminated the services of workmen concerned on various dates mentioned against their names in the list Annexure – I. This action of first party company in terminating the services of concerned 169 workmen is unjust, unfair & improper, illegal, malafide, arbitrary, act of victimization and unfair labour practice.

10. According to the union, the concerned workmen have been victimized because all the workmen concerned had left the earlier union i.e. Bharatiya Kamgar Sena and have / had joined the second party union. The second party union had given strike notice and had also raised various grievances by issuing various letters in respect of service conditions of the workmen concerned. Therefore with a view to get rid of these workmen the first party company had resorted to said termination.

11. According to the union, the post on which the concerned workmen were employed i.e. Loaders-cum-Cleaners, Drivers and Operators etc. still exists in the company and after termination of the service of the concerned workmen, the company has appointed / recruited fresh hands in places of workmen concerned. The management of the first party company should and ought to have given re-employment to the concerned workmen. The company's action in not giving the re-employment to the concerned workmen is in contravention of section 25 (H) of I.D. Act, 1947. The company had also committed breach of mandatory provisions under section 25-G of I.D. Act read with section 77 of Industrial Disputes (Central) Rules, 1957.

12. According to the union, as the company's own showing the impugned action amounts to retrenchment of workmen concerned because the company had offered the retrenchment compensation under section 25-F of I.D. Act, 1947 to the workmen concerned. Thus, the termination of the concerned workmen falls within the term of retrenchment defined under section 2 (oo) of the I.D. Act, 1947. The company has also resorted unfair labour practice under items 5(a), 5(b), f(d) and 5(f) of the FIFTH schedule read with section 2 (ra) of I.D. Act, 1947. Therefore the impugned termination by the management of the company are for false reasons by not complying with mandatory

provisions under section 25-F, 25-G, 25-N of I.D. Act read with Industrial Disputes (Central) Rules, 1957 i.e. Rule 77 thereof.

13. According to the union, the conciliation proceedings were pending before the Conciliation Officer (Central), Mumbai and as such the first party company ought to have complied with section 33 of I.D. Act, 1947 before dispensing with services of the concerned workmen. Therefore also the impugned action of the first party company is illegal.

14. It is also the case of the union that the first party company has agreed before the Conciliation Officer (Central) that they have outsourced their activities which the concerned workmen were doing. Thus, the management of the first party company has contravened the mandatory provisions under section 9-A read with FIFTH schedule – Items 10 & 11 of I.D. Act, 1947.

15. According to the union, the first party company is employing around 200 workmen to do the work of Loaders, Drivers and Cleaners and the workmen concerned have been kept out of the entry work and wages and they have not been given statutory benefits under section 25 (H) of I.D. Act, 1947. As such the action of the management of first party company terminating the services of workmen and recruiting fresh hands to do the very same work is nothing but hire & fire policy and victimization of concerned workmen. The union is therefore asking for declaration to the effect that the action of the management of first party company in terminating the services of concerned workmen is unjust, illegal and improper. The union is also asking for directions to the first party company to reinstate the concerned workmen with full back wages and continuity of service from the date of their respective termination and to pay their back wages with 18% compound interest thereon and to direct the first party company to pay compensation in addition to the reliefs of reinstatement and back wages.

16. First party company has resisted the statement of claim by filing written statement Ex.21. According to the first party company the union did not raise any demand with the management nor raised any industrial dispute as contemplated in section 2 (k) of I.D. Act, 1947. There is no such demand at any time since no demand was ever raised, the reference is liable to be rejected.

17. It is then contention of first party company that the concerned workmen were formally the members of registered Trade Union viz. Bharatiya Kamgar Sena. The said union has raised the charter of demands dated 27.04.2001 which after negotiations resulted in a settlement dated 2.5.2002. In the said charter of demands, Bharatiya Kamgar Sena on behalf of the concerned workmen and similarly placed temporaries engaged on fixed term contact of employment had raised a demand for grant of permanency. However, during the course of negotiations, Bharatiya Kamgar Sena gave up the said demand and ultimately a comprehensive settlement dated 2.5.2002 was signed as a package deal which conferred much benefits on the workmen who gave up the said demand. Thus, the status of concerned workmen as temporaries on fixed term contacts was accepted and sanctified by the Trade Union and was finally settled at the relevant time. Said settlement was accepted by each and every employee. The said settlement is in force till date and the union concerned submitted fresh charter of demands in contravention of the provisions of the act. Even in pursuance of the said charter of demand, the union in contravention of the terms of settlement served strike notice dated 22.10.2002 upon the management. The company in accordance with the provisions of the act forwarded the said strike notice to the Regional Labour Commissioner (Central) with a request to intervene the matter. The company also filed writ petition bearing WP No. 2127 of 2002 before the Division Bench of Hon'ble Bombay High Court and prayed for injunction against the union and its office bearers to prevent them from acting in pursuance of the said strike notice.

18. It is also contention of first party company that depending upon the exigency of work the management used to appoint the persons to work as Loaders-cum-Cleaners, Drivers on fixed term contact basis. The said contracts are issued in writing. Facts of fixed term employment were specifically mentioned in the said contract. This was mutual and binding contract willingly entered into by the ex-workmen with full knowledge of the terms & conditions accepted by them. thereafter having regard to burden of work as well as decision of outsourcing certain types of jobs and the practice followed by the competitors. It was not found necessary to engage fixed term employees or to renew the said contracts. Therefore, the management relieved the said employees upon automatic cessation as per the terms & conditions of the said contract. The relieved personnel in good faith and by way of abundant precaution were paid retrenchment compensation by the management though their services were not retrenched in view of exclusion provided in section 2 (oo) (bb) of the I.D. Act, 1947. It is thus contention of management that it has not terminated the services of the concerned workmen but this is a case of expiry of fixed term contract and non-renewal thereof.

19. It is thus contention of first party company that the retrenchment compensation was paid to the said employees on humanitarian ground, in good faith, in their interest and out of abundant precaution since outsourcing the work performed by the workmen concerned has always been more convenient and economical but since earlier the Ministry was not permitting contract labour to meet the exigency of work of airlines, management was constrained to engage the temporary workmen to meet the exigency of work. Central Government subsequently changed its policy and permitted

airlines to engage contract labours and therefore the airlines outsourced the work. This is purely the policy decision of the airlines pursuant to changed policy of the Central Government. The first party company has thus denied that the concerned workmen were engaged in departments on permanent post and the work which they are doing was of perennial nature. It is also denied by the first party company that it has victimized the employees with malafide intention. The first party company has thus sought the rejection of the reference also on the ground that the concerned workmen have not authorized the union to espouse their cause.

20. The following issues are framed at Ex.46, I reproduce the issues with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the reference is maintainable in the present form ?	Yes
2.	Whether the union has locus standi to espouse this reference ?	Yes
3.	Whether the demand of the union for re-employment/reinstatement with full back-wages of these 169 workmen in service of the first party is just and proper ?	No
4.	What relief the workmen are entitled to ?	As per final order
5.	What Order ?	As per final order

REASONS

Issue No. 1

21. It is the case of the management that unless specific demand for specific relief is raised before the Conciliation Officer, the industrial dispute does not exist. Since no demand was ever raised by the union before the Conciliation Officer appointed under the said act, the reference is not maintainable.

22. Learned Counsel for the management submitted that the appropriate government has referred the dispute on the purported assumption that the industrial dispute exists between the parties and therefore the same is referred before industrial tribunal under section 10(1) of the said act. It is submitted that the dispute is not referred under section 2A of the said act because the same is in the name of union and not workmen individually. With this, the submission is that it was mandatory upon the union to prove the existence of demands which the union has failed and avoided to prove that it has raised the demand before the Conciliation Officer.

23. As a matter of fact, second party union had given strike notice to the first party company dated 22.10.2002 as per section 22 (1) of the I.D. Act, 1947. The management of the first party company had filed writ petition bearing No. 2127 of 2002 against the union and Ors. before the Hon'ble Bombay High Court. The writ petition was in respect of grievances raised by the management of first party company about the strike of the employees. After the issuance of strike notice, the Conciliation Officer had intervened in the matter. The Conciliation Officer had conducted the proceedings. Ultimately the Conciliation Officer submitted the failure report dated 24.2.2003 wherein the grievance was made about the termination of the concerned workmen. It can be said therefore that the grievance was made by the union before the Conciliation Officer.

24. So far requirement is concerned, to constitute the industrial dispute envisaged under section 2(k) of the I.D Act, 1947, the essence is any dispute or difference between the employer and the workmen. Section 2 (k) of the I.D. Act, 1947 does not at all speak about the espousal of industrial dispute by any trade union. The existence of industrial dispute under section 2 (k) and adjudication of same or resolution of the same or the connection of the same is directly connected with the employment or non-employment or the terms of employment or with the conditions of labour. The legal position in this respect is amply made clear in the decision in case of M/s. Ramakrishna Mills Ltd. V/S. Government of Tamil Nadu 1984 (II LLJ 259) wherein it is held that

“for existence of industrial dispute there ought to be a demand by the workmen and a refusal to grant it by the management. How the demand should be raised should not be and could not be a legal notion of fixity and rigidity. The grievance of the workmen and the demand for its redressal must be communicated to the management. The means and mechanism of communication adopted are not matters of significance so long the demand is that of the workmen and it reaches the management. Written demand on the management is not in all cases a sine-quo-non. There must arise a dispute or difference within the meaning of section 2(k) or

2(A) of Industrial Dispute Act. Talks and discussions before Assistant Commissioner of Labour related to order of dismissal and demand to set them at naught and take back the workmen.”

25. In para 2 of the judgment it has been observed that the demand as such need not in all cases be directly made by a representation to the management and the demand could be made through other sources also.

26. Learned Counsel for the management submitted that the reference is made due to non-application of mind of Conciliation Officer as well as non-application of mind of appropriate government. It is submitted that failure report would disclose that the Conciliation Officer is under misnomer that the union BKKM issued strike notice dated 22.10.2002 demanding reinstatement of 169 workmen when infact the demand is raised by BKKM for the permanency of temporary workmen and for reinstatement of 3 workmen who are not of the 169 workmen concerned. Thus the conclusion of the Conciliation Officer in his failure report dated 22.4.2003 that the charter of demands contained demand of reinstatement of 169 workmen concerned is without any basis and result of non-application of mind. Submission is to the effect that when undisputedly union never raised any demand for reinstatement of the concerned 169 workmen, there is no question of considering as to whether the said demand is just, legal & proper.

27. However, in the context legal position is that the reference under section 10 requires

- I. the existence & apprehension of industrial dispute.
- II. the dispute referred for adjudication has to be in respect of the matters within the jurisdiction of industrial tribunals under the IIIrd schedule.
- III. the retrenchment of the workmen is one of the items i.e. entry 10 under IIIrd schedule. Similarly
- IV. the discharge or disposal of workmen including reinstatement of or grant of reliefs to workmen wrongly dismissed also comes under entry 3 under the IIInd schedule.

28. In the present case the union did raise the grievance before the Conciliation Officer vide their rejoinder dated 19.2.2002. Hence the present reference is referred to for adjudication. As per the legal position if there is no specific form of reference and when infact no written demand is necessary then the statement of the first party company in their written statement in para 10 on page 18 & 19 whereby first party company has agreed about the grievance by the second party union in respect of concerned 169 workmen is sufficient for the appropriate government to opine that the industrial dispute exists or apprehended.

29. In the context the Learned Counsel for the second party seeks to rely on the decision in case of Management of Needle Industries V/S. Presiding Officer, Labour Court, Coimbatore 1986 I LLJ 405 wherein it is held

“it is nowhere stipulated in the act particularly in section 2 (k) of the I.D. Act, 1947 that the existence of the dispute as such is not enough but then there should be demand by the workmen on the management to give rise to industrial dispute. Mere existence of the dispute is enough under the act and no demand by workmen on the management is necessary.”

30. However, the Learned Counsel for the management then submitted that the dispute is not referred under section 2 (a) of the said act and therefore the reference is made due to complete non-application of mind of the Conciliation Officer as well as non-application of the mind of the appropriate government.

31. This submission is not acceptable since the order of reference is not amenable to judicial review. Industrial tribunal cannot say that the formation of the opinion by the appropriate government with the industrial dispute exists or is apprehended is not correct. Industrial tribunal cannot enter upon the considerations as to whether the pre-conditions impropriety of the appropriate government to make reference existed or not. These are the observations which I borrow from the decision in case of Kolam-Jilla Hotel & Shop Workers Union V/S. Industrial Tribunal 1998 I CLR 209. It is held that

“mere wording of the reference is not decisive in the matter of tenability of reference. Even though the tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it. It has only duty and that is to decide the points on merit and not to find out some technical defects in the wording of reference subjecting the poor workmen to hardship involved in moving the machinery again.”

32. As a matter of fact, in respect of dispute which is espoused by BKKM i.e. second party workmen, conciliation proceedings were held and Assistant Labour Commissioner, Mumbai in his failure report dated 22.4.2003 has mentioned about the reinstatement of 169 workmen. The list of 169 workmen is sent along with order of reference. In view of that it can be said that there has been demand in respect of concerned workmen.

33. In view of that I find that reference is maintainable in the present form. Issue No.1 is therefore answered accordingly as indicated against it.

Issue No.2.

34. The Learned Counsel for the management submitted that second party union has no locus-standi to espouse the present reference. It is submitted that the admittedly the union concerned had not made an application under Rule 3 of the Industrial Dispute (Central) Rules 1957 read with Form A prescribed therein. Clause (2) of the said form requires the signatory to produce authority to make an application by way of resolution adopted by the majority of the members present at the meeting of the member workmen. The said requirement is mandatory and the same cannot be avoided. The union has failed to produce any authority before this tribunal to espouse the case concerned in the reference and therefore union has no locus-standi to espouse this cause.

35. In this respect, it will have to be said that there is no such resolution adopted by majority of the members authorizing the union to espouse the cause. What is necessary is that the union in order to take of the cause should be sufficiently represented by the workmen to espouse the cause. In the decision in case of J.H. Jadhav V/S. Forbes Gokak Ltd.2005 I CLR 1082. It is held that

“as far as espousal is concerned, there is no particular form prescribed to effect such espousal. Doubtless the union must normally express itself in the form of resolution which should be proved if it is an issue. However, proof of support by the union may also be available aliunde. It would depend upon the facts of each case.”

36. The Learned Counsel for the management submitted that the industrial dispute can be said to exist only when the large number of workmen of the employer are entrusted in the cause espoused by the union. About 10000 employees are employed in the company and therefore it cannot be said that large number of workmen of the company are entrusted in the dispute for adjudication before the tribunal. Submissions are also to the effect that the union has avoided to produce any documentary evidence to establish its locus-standi.

37. In this respect, also the reference is made to decision in case of J.H. Jadhav V/S. Forbes Gokak Ltd.2005 I CLR 1082 cited supra to submit that the phrase “union” merely indicates the union to which employee belongs even though it may be a union of minority workmen. In such cases also it is open to the union to take the cause of such workmen if it is sufficiently representative of those workmen.

38. Considering all these facts, I find that in the present case the concerned workmen are sufficiently represented by the union who has espoused the cause by way of rejoinder in the conciliation proceedings and the Conciliation Officer submitted the failure report where upon the government has referred the dispute for adjudication. So once the reference is made by the government it will have to be presumed that the government has applied its mind to that aspect of the matter. In this respect also the Learned Counsel for the union has resorted to the decision in case of Aminesh Chandra Datta Roy Petitioner V/s. Labour Court Tirpura and Anr. 1975 LAB IC 1065. Hence I find that the union has locus-standi to espouse this reference. This issue is answered accordingly.

Issue No.3.

39. So far the contention go, it is the contention of the workmen that they were appointed for doing the work which is integral part of the day to day activities of the first party company. This work is permanent, perennial and regular in nature. According to them the concerned workmen were employed as Loaders-cum-Cleaners, Drivers and Operators for doing such regular, permanent work though they were treated as temporary workmen.

40. Sandeep Jadhav the workmen at Sr. No.40 of the list in his evidence has stated that he was employed as Loaders-cum-Cleaner in the first party company as per appointment letter dated 20.11.98. The similar appointment letters were issued in favour of rest of the 168 workmen. On going through these appointment letters, it appears that they were appointed on contact. These appointment letters read that they were appointed on temporary basis for certain period and their temporary appointment will come to an end on a particular date mentioned in their appointment letters. Terms & conditions of their employment are specifically mentioned in their letters with specific term to the effect that the company may terminate their services without notice and without assigning any reason whatsoever at any time during the period of their temporary tenure mentioned in their appointment letters. Further it appears from the letters issued to them subsequently, that their temporary appointments have been extended from time to time upto certain period on same terms & conditions which remained unchanged.

41. It is no doubt true that the concerned workmen were admittedly doing the work which is permanent and perennial in nature. On going through Annexure – I of statement of claim, it appears that the some of the workmen were appointed as Loaders-Cleaners, some were appointed as Loaders and some were appointed as Drivers. From this Annexure – I it appears that some of them were appointed in 1998, some were appointed in 1999, some were appointed in 2001 and some were appointed in 2002. The date of their joining, date of termination order, post held by them, their staff No. and the names of these workmen are specifically mentioned in this Annexure – I. Even it is admitted by the witness of the management Shri Gopal Krishnan in his cross-examination that the duties performed by the concerned workmen were of permanent, regular and perennial nature. It is even admitted that there were permanent drivers and

permanent loaders-cum-cleaners at the time when the concerned workmen were engaged as loaders-cum-cleaners and drivers. From the above evidence it is clear that the concerned workmen were appointed on temporary basis for a particular period which will come to an end and management can terminate their services without notice given to them. This temporary appointment was continued on same terms & conditions. The work which the concerned workmen were doing is of perennial nature and even there were permanent workmen for doing the same work at the time when concerned workmen were appointed.

42. In view of that the Learned Counsel for the concerned workmen submitted that the concerned workmen have acquired the status of permanency as per order Nos. 2(b) and 2 (c) of the Model Standing Orders (Central) framed under Industrial Employment (Standing Orders) Act, 1946. Hence I shall refer to the respective standing orders which are reproduced herein under.

- “2(b) A “Permanent” workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to strike (not being an illegal strike), sickness, accident, leave, lock-out or involuntary closure of the establishment
- (c) A “probationer” is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months’ service therein. If a permanent employee is employed as a probationer in a new post, he may, at any time during the probationary period of three months, be reverted to his previous permanent post.”

43. On going to these standing orders Act, 1946, the permanent workmen is a workmen who have been engaged on permanent basis and includes any person who have satisfactorily completed probationary period. The appointment orders do not speak about the appointment of the concerned workmen on permanent basis. However, it speaks that the appointments of the concerned workmen were on temporary basis for the period of six months only for a particular period which would come to an end on a particular date. This is precisely the appointment on fixed term contract which would come to an end after the expiry of the contract period. All these appointment letters and the contents therein are admitted by the concerned workmen with specific mentions therein that their appointments were on temporary basis for a particular period. If this is accepted then there can be no doubt that the concerned workmen were engaged on fixed term contract and it is irrelevant whether the such contracts were extended from time to time and they worked with the management for 240 days continuously.

44. The Learned Counsel for the first party management seeks to rely on the decision in case of State of Rajasthan V/S. Rameshwarlal Gahlot, AIR 1996 Supreme Court 1001. In that case the undisputed facts are that

“respondent was appointed for a period of three months or till the regularly selected candidate assumes office. He was appointed on January 28, 1988 and his appointment came to be terminated on November 19, 1988. When the writ petition was filed, the learned single Judge held that since he had completed more than 240 days, the termination is in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, ‘the Act’) and directed to make fresh appointment of the respondent. When appeal was filed against the latter part of the order, the Division Bench set aside the latter part of the order and directed reinstatement with back wages. As against the order altered by the Division Bench, the present appeal came to be filed.”

It is held that

“where the appointment is for fixed period unless there is finding that power under clause (bb) of section 2 (oo) was misused or vitiated by its malafide exercise, it cannot be held that termination is illegal.”

45. Realising this difficulty, the Learned Counsel for the concerned workmen submitted that the first party company is carrying out the repairing and maintenance activity i.e. repairing and maintenance of aircrafts. Similarly, the activity of cleaning are also carried out by the first party company. Therefore, the first party company is an industrial establishment covered under chapter V-B of I.D. Act, 1947. It is employing more than 100 workmen and it is carrying out the activities which partakes the character of manufacturing activities. Submission is to the effect that the first party company comes under the definition of ‘Factory’ as per the provisions of ‘The Factories Act, 1948’ and workers employed are presumed to be directly employed by the company. With this the submission is that the concerned workmen have been shown as permanent workmen doing similar, identical work of the permanent workmen and therefore they cannot be treated as fixed term contract workers.

46. This submission is not acceptable and is other way round, because the documents which are placed on record and admitted by concerned workmen show that the notices were issued to the concerned workmen mentioning therein

that after expiry of their fixed term employment they are relieved and their employment automatically came to an end. Having gone through these notices given to the concerned workmen, with subject “expiry of your fixed term employment” reads that the fixed term employment of the concerned workmen automatically came to an end on expiry of the period. They were initially appointed for fixed period and from time to time appointment orders were issued on fixed term basis by extending their fixed term employment and on expiry of the said period their employment came to an end. Wording of these letters clearly show that the appointment of the concerned workmen is on temporary basis on fixed term. It is of no consequence therefore that they were doing the work which other permanent employees were doing and that they did the work of regular and permanent nature. If appointment itself is for fixed term contract then it is of no consequence that they did the work of such nature for 240 days or more.

47. Even then the Learned Counsel for the concerned workmen submitted that first party company had filed writ petition bearing No. 2127 of 2002 against the union and Ors. before the Hon’ble High Court and the order was passed by Hon’ble Division Bench as follows.

“we observe that in case any employee or the employees represented by the first respondent union is / are terminated by the petitioners, the said termination order shall come into effect after two weeks from the date of service of said order on the concerned employee.”

48. He submits that the Learned Senior Counsel appearing for the first party company before the Hon’ble Division Bench of Hon’ble Bombay High Court on 25.09.2002 clearly submitted as follows,

“Learned Senior Counsel appearing for the petitioners seriously refuted such apprehension and submitted that if at all services of some of the employees are terminated it would be because of pruning work force in the first Respondent.”

In this view it is submitted that no where before the Hon’ble Bombay High Court Learned Senior Counsel of the company stated that the company had intended to terminate the services of the concerned workmen because of non-renewal of contract of employment. Therefore, the submission is that the first party company never intended to appoint the concerned workmen on fixed term contract.

49. As a matter of fact, this writ petition was filed by the company in respect of strike notice of the employees including the employees who are the permanent employees. By no stretch of imagination it can be said that in that writ petition there was point for consideration as regards to the status of the employees. When the apprehension was raised as regards to the termination of the permanent employees the submission of the Learned Senior Counsel was that due to paucity of the work force there may be termination of permanent employees and then the Hon’ble High Court has passed the impugned order. The dictionary meaning of the word “pruning” is remove, reduce, clear cutting away dead or overgrown parts. Meaning thereby that the apprehension was of removal of surplus labour which were refuted by the Learned Senior Counsel. That does not indicate any intention of the first party company to show that the concerned workmen were appointed on permanent basis when infact letter at page 140 of the Volume-I of the management compilation of documents show that the appointment of the concerned workmen initially was on fixed term contract along with extension of the workmen concerned. These documents clearly establish that the concerned workmen were engaged on fixed term contract. It is now clear that the engagement of the concerned workmen was on fixed term contract.

50. Even then the Learned Counsel for the concerned workmen submitted that there cannot be any cessation of any work or completion of the work which the concerned workmen were doing as Loaders-cum-Cleaners, Drivers and Operators. He submits that the said work which the concerned workmen were doing is of regular, permanent and perennial nature and therefore there is no question of paucity of the work which the concerned workmen were doing. He refers to the notice displayed by the first party company on 23.07.2002 which is annexed at Annexure – III with the statement of claim to submit that in the said notice it is specifically mentioned that

1. the temporary workmen in services of the company who have put up minimum one year service will be considered for regular employment after verification of their antecedents, past service record regarding their absenteeism, punctuality, general discipline, grooming etc. and subject to their medical clearance. All such workmen will be governed by the conditions of employment as applicable to existing permanent workmen and they will have to be put on roll w.e.f. 1.6.2002 and 1.8.2002.
2. the existing roistering pattern of six nights, two off would be suitably modified.
3. flexibility of development in different work sections would be notified on full shift basis on exigency of work.
4. break shift pattern would be progressively repeat.

All eligible candidates would be interviewed from 10.7.2002 onwards. Selected candidates will be issued appointment letters by 15.08.2002.

51. In this view it is submitted that the management had decided to award the status or grant of status of permanent workmen to the concerned workmen in the reference and even the dates of interview and dates of issuance of appointment letters were fixed respectively as 30.07.2002 onwards and 15.08.2002. Therefore it is totally improbable that suddenly within a span of few months from the date of this notice the employer will come with termination of the workmen on that ground that their contract of employment was fixed term contract.

52. This submission though appears probable is not acceptable and it is to be seen in what circumstances the first party company has relieved the concerned workmen from their services on expiry of the period. For, it is explicit that in the light of change of policies, the management of all airlines were barred from engaging non-permanent workmen for ground handling work. To show the fact of changed government policies the reference is made to the decision of Hon'ble Delhi High Court in WP [C] No. 8004 of 2010. Jet Airways was also one of the petitioners in the said writ petition which came to be filed by federation of Indian Airlines and Ors. against Union of India, against the changed policy of Ministry of Civil Aviation. Prior to framing of Rules 2002 policies of Ministry of Civil Aviation permitted to carry out ground handling work through workmen of their own choice including fixed term employees. In order to bring ground handling at par with the global standards and also from security point of view the Ministry of Civil Aviation changed its earlier policies and framed the rules compelling the airlines to carry out the ground handling work either through its permanent Loaders – cum – Cabin Cleaners workmen or through the government approved contractors. By such rules and directives, it was not even possible to airlines to carry out the work of ground handling even through their permanent workmen but has to get work done through approved contractors only. The writ petition came to be filed challenging the rules framed by Ministry of Civil Aviation from time to time. However, the Hon'ble Delhi High Court rejected the writ petition and no stay is granted upon the changes in the policies. Obviously, it appears that the aforesaid rules framed in 2000 prevented the airlines from continuing the said fixed term employees as the said rules direct the airlines to carry out the said work only through permanent workmen of airlines or through contracts approved by the Ministry of Civil Aviation. In view of that airlines had no option but not to renew the fixed term contract of the concerned workmen and therefore after expiry of the fixed term contract, the said fixed term contracts were not renewed resulting in dis-continuing fixed term contract of the workmen. If this is the position then it cannot be said that the non-renewal of fixed term contract was improbable.

53. Next submission of the Learned Counsel for the concerned workmen is that if all the concerned workmen were on fixed term contract then there was no necessity to pay them retrenchment compensation. It is certainly true that the retrenchment compensation was paid to the concerned workmen on non-renewal of contract on humanitarian ground as stated by the first party company. That does not mean that it was their termination, amounting to retrenchment defined under section 2 (oo) of I.D. Act, 1947. Section 2 (oo) of I.D. Act, 1947 speaks about the retrenchment which means the termination by an employer of the service of workmen for any reasons whatsoever otherwise then the punishment inflicted by way of disciplinary action, but does not include

- a) voluntary retirement
- b) retirement of workmen on reaching the age of superannuation.
- bb) termination of service of workmen as a result of non-renewal of the contract of the employment between the employer and workmen concerned on its expiry of such contract being terminated under stipulation contained therein.
- c) termination of the service of the workmen on the ground of continued ill-health.

From the facts in the present case it is clear that the management while intimating the concerned workmen that their fixed term contract are not extended any more and though the same does not amount to retrenchment, in all fairness to enable to avoid the employees to survive till they found alternative employment and also by way of abundant precaution is paying amount equivalent to retrenchment compensation and one month notice pay to each of the workmen who have completed 240 days. It is intimated to the concerned workmen that since they were appointed on purely fixed term basis, non-renewal of contract on expiry of their fixed term employment does not amount to retrenchment, however, as humanitarian gesture they are being paid retrenchment compensation and notice pay calculated in line with section 25 of I.D. Act, 1947. This would show that in view of section 2 (oo) (bb) of the I.D. Act, 1947 termination of the concerned workmen as a result of non-renewal of contract does not amount to retrenchment.

54. In the context the Learned Counsel for the first party company seeks to rely on the decision in case of Escorts Ltd. V/S. Presiding Officer & Anr. (1997) 11 SCC 251 wherein para – 4 of the judgment, it is observed that

“4. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because, in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) in Section 2 (oo) of the Act. Clause (bb) excludes from the ambit of the expression “retrenchment” as defined in the main part of Section 2 (oo) “termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.”

55. He also seeks to rely on the decision in case of M. Venugopal V/S. LIC of India 1994 (1) CLR 544. In this case probationer was dis-continued for non satisfactory service. He challenged the same on the ground of violation of provisions of I.D. Act related to retrenchment. Supreme Court held that discontinuation of the probationer does not amount to retrenchment because the same falls under exception of section 2 (oo) (bb) relating to non-renewal of contract because there is stipulation in contract regarding probation period, its extension and also the right to end the contract of employment.

56. Learned Counsel for the concerned workmen submitted that the work which the concerned workmen were doing is continued and fresh hands have been employed and then as per mandatory provisions of section 25-H of I.D. Act, 1947 the preference should be given to the concerned workmen. Not a single workman has been re-employed by the first party company. As such they are entitled for reinstatement with full back wages, continuity of service and other consequential benefits.

57. Section 25-H reads as follows.

“Re-employment of retrenched workmen – Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons.”

58. Section 25-H thus provides for re-employment of the retrenched workmen. Here in this case there is no retrenchment since the non-renewal of fixed term contract did not amount to retrenchment as provided under section 25 (oo) (bb) of the said act. As seen earlier, in view of changed policies and the directions of the concerned ministry, ground handling work is to be done by the permanent workmen or through approved government contractor. It is admitted by the concerned workmen in his cross-examination that after implementation of these policies the first party company has started doing this handling work through approved government contractor. So there was no question of re-employment of the concerned workmen in view of section 25-H of the I.D. Act, 1947.

59. Here, it will be stated that section 25 (B) is under chapter V (A) of the said act which makes provisions concerning the lay off and retrenchment. Section 25 (B) defines continuous service. Section 25 (G) provides for the cases of retrenchment. Section 25 (N) and (L) are parts of chapter V (B) of the act which provides for the specific provisions leading to lay off retrenchment and closure in certain establishments. It is the contention of the concerned workmen that there is violation of these sections, since termination of the concerned workmen amounts to retrenchment.

60. In my considered view when there is sufficient evidence to show that the case of the concerned workmen clearly falls under section 2 (oo) (bb) and hence no provision concerning retrenchment is attracted to the facts of this case. Hence I shall simply reproduce the decisions relied upon by the Learned Counsel for the concerned workmen.

- (a). Decision in case of Director Fisheries Terminal Division V/S. Bhikubhai Meghajibhai Chawda 2009 III CLR 941 wherein it is observed that the statement of oath by the workmen that he had worked for 240 days continuously in a year with the appellant, the burden to prove otherwise shifted on employer / appellant. Evidence led by the appellant on this point is self contradictory and infact there is no challenge to the deposition of the respondent during the course of examination. It is held that the provisions of 25 (H) and 25 (G) are not followed while passing the order of termination of the services of the Respondent.
- (b) Haryana State Electronics & Development Corporation V/S. Manini, 2006 (109) FLR 1000.

The facts of cases cited supra are quite distinct and distinguishable.

61. Considering all these facts, I find that the demand of the union for re-employment / reinstatement with full back wages of these 169 workmen in service of the first party company is not just and proper. Issue No.3 is therefore answered accordingly in negative.

Issue Nos. 4 & 5

62. In view of my findings to Issue No.3, I find that the concerned workmen are not entitled to any relief and the reference is liable to be rejected. Hence I pass the following order.

ORDER

Reference is rejected with no order as to costs.

Date: 30.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1490.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 184/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/63/2002-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1490.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 184/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of WCL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/63/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/184/2003**

General Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
Pathakhera Area,
Distt. Betul (MP)

...Workman/Union

Versus

General Manager,
Western Coalfields Ltd.,
PO Pathakhera,
Distt. Betul (MP)

...Management

AWARD

Passed on this 12th day of May, 2017

1. As per letter dated 15-12-2003 by the Government of India, Ministry of Labour, --New Delhi, the reference is received. The reference is made to this-- Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012-63/2002-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of WCL, Pathakhera in not paying Gr.V wages in r/o Shri Yado Rao Gawade is legal and justified? If not to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3. Case of workman is that he was working as loader. As per letter dated 3-9-96, he was converted from loader to time rated for requirement of work. After he was converted to time rated, his pay was not protected as per SPRA, management had fixed his wages in middle of Cat-I whereby workman suffered loss.

3. 2nd party filed Written Statement at Pages 6/1 to 6/5 opposing claim of Ist party. 2nd party submits that it is registered under Company's Act having headquarter at Nagpur. That service conditions of employees working in coal industry are covered by NCWA and various settlements, standing orders. That workman was initially appointed as badly, piece rated tub loader form 26-10-79. He was regularized as tub loader from 1-4-81. That piece rated labours are paid group wages for minimum work load. They were paid additional wages done by individual loader. As per NCWA prescribed work load of loader in Pathakhera is 118 cubit ft. per day. In case of excess of less work load, labours are entitled to pro rata wages for more production and safe mining of coal, new technology and machines are introduced. Manual loading is not required. Since piece rated loaders were not required for coal production, to avoid act of retrenchment, management and Union agreed to convert such surplus piece rated workers to different time rated categories. Bipartite Settlement was entered on 31-10-95. Settlement was sent to ALC, Chandrapur, Nagpur, Chhindwara, Bhopal for registration of record note of discussion. That Ist party Yado Rao was selected for conversion from piece rated to time rated on 3-9-96. He was converted to time rated job as General Mazdoor Category-I. His basic pay is Rs.72.96. the scale of pay Rs.65.40-1.08-80.52. workman was designated as timber helper Cat-III, pay scale 133-75-2.66-181.88 as per NCWA-VI. That after lapse of 5 years, dispute is raised by RKKMS Union claiming protection of Group wages for loader. After dispute was raised before ALC, workman was not interest to be converted from piece rated to time rated. All adverse contentions of Ist party are denied. That Ist party was paid wages of Cat-I after his conversion to time rated category. That dispute raised by Ist party is highly belated and not tenable. On such grounds, 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of WCL, Pathakhera in not paying Gr.V wages in r/o Shri Yado Rao Gawade is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. Workman filed affidavit of his evidence supporting whole contentions in statement of claim about his working as piece rated loader from 26-10-79. His transfer to Shobapur mine on 17-3-94 after conversion from piece rated to time rated. His pay was fixed in Cat-I Rs.72.96. that he was not allowed wages of Grade V for work of time rated loader. Pay protection was not allowed to him. In his cross, workman says after his appointment as loader, he was transferred to other work, work of loader is carried through machine in 2004. He was allowed conversion to time rated job, in 2006, it was not possible for him to convert to piece rated job as he worked long time on piece rated job.

6. Management filed affidavit of witness Shri R.D.Tudu Personal Manager supporting contentions in Written Statement filed by management. In his cross, management's witness says agreement dated 1-11-95 Exhibit M-3 applies to WCL. On the basis of said agreement, conversion was made from piece rated to time rated. Management's witness denied that as per requirement of the management, workman was converted to time rated category. The documents produced Exhibit W-2 order dated 14-10-96, W-3 13-9-95 prescribed rates of wages.

Shri A.K.Shashi submitted copies of award in R/12/02, 76/04. This Tribunal had rejected claim for pay protection. Order passed in Writ Petition 828/97 by MP High Court, Jabalpur. His Lordship held that matter of fitment in pay scale and pay protection cannot be decided on general principles of law without reference to the terms of settlement reached between the employees and the management.

7. Ist party has not produced any document allowing pay protection to the piece rated employees converted to time rated category. Therefore claim of workman for pay protection/ wages of Cat-V is not justified. Therefore I record my finding in Point No.1in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of WCL, Pathakhera in not paying Gr.V wages in r/o Shri Yado Rao Gawade is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1491.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 14/1995) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/326/1993-आईआर (सो-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1491.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of SECL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/326/1993-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/14/95

Secretary, Rashtriya Colliery Khadan Mazdoor Sangh, Post Ittar, Jharkhand Colliery, Distt. Surguja MP	... Workman/Union
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Versus

Sub Area Manager, Kurja UG Project, SECL, Post Bijuri cColliery, Kurja, Distt. Shahdol (MP)	... Management
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AWARD

Passed on this 22nd day of May, 2017

1. As per letter dated 5-1-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/326/93-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of Kurja Underground Project under Hasdeo Area of SECL in denying regularization to 95 workmen (list enclosed) engaged by 2 contractors namely S/Shri Mazar Ali and M/s. Nalanda Enterprises during the years 1989 to 92 is legal and justified? If not to what relief the workmen concerned are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Pages 2/1 to 2/4. Case of Ist party RKKMS Union is the concerned workman whose names appeared in list annexed with order of reference were employed in Kurja underground project under control of the management. The concerned workmen were doing job of prohibited category in driving of stone drifts, stone cutting in underground mine. The concerned workman were also doing the work of overburden removal of stone cutting. That initially workers are employed directly by 2nd party in mining operation of Kurja mine from 1989 to 1992 through name of contractors. That the officers of management used to supervise their work, take attendance of workers. The workers were working under direct control and supervision of the officers of the company. That raw material like tools used were provided to workman for purpose of coal raising operation. That in similar circumstances, in R/7/89, award was passed by this Tribunal directing contractor's employees treated as employees of principal and directions were issued to employ them on regular basis.

3. Ist party further submits that management adopted discriminatory attitude towards workman. Award passed by this CGIT was not followed. The attitude of management is discriminatory and violative of Article 14 of the constitution. Management of 2nd party is a state within meaning of Article 12. Management should have behaved like model employer and award passed by Tribunal should have been followed. Management shown concerned workman employed through contractor but in real sense, the contractor ship is nothing but an attempt by management to deprive right for regularization. Agreement is alleged to be nothing but for denial of regularization of workman. On such ground, Ist party Union prays for regularization of workers engaged by contractor Mazar Ali and Nalanda Enterprises by 2nd party.

4. 2nd party management filed Written Statement opposing claim of workman at Pages 4/1 to 4/4. 2nd party submits that SECL is registered under Company's Act. Company is having many colliery in State of MP producing coal. Kurja Underground mine is one of such mine in Hasdeo Area of SECL. Kurja underground mine started its production from 1-10-92. That to carry out initial stage of work, management is required to undertake some initial work for detecting of coal for its mining. It is one time job. It is not required when coal is traced. For such work, management is entitled to engage contract labours. Government of India by Notification prohibited certain category of work- (a) raising or raising cum selling of coal, coal loading and unloading, overburden removal and earth cutting, soft coke manufacturing, driving of stone drifts and miscellaneous stone cutting underground. That management is entitled to engage contract labours in any other categories except the prohibited categories as per notification. Kurja underground mine through contractors Mazhar Ali, M/S Nalanda enterprises were engaged for drivage of 2 incline of size 4.8m to 4.4m length 160m. the contractors were awarded work for drivage of 2 incline shaft. The date of commencement by Nalanda Enterprises was 19-5-90, date of completion as per agreement 11-11-90. Date of commencement by contractor Mazhar Ali was 14-6-91, date of completion was 13-9-91. That the contractors was unable to complete work within schedule time. Management granted extension to them for completion of work. That drivage of incline is not prohibited category of work as per notification. The contractor engaged for execution of such contract. There was no employer employee relationship between management and contract labour. After completion of contract, the employment of contract labour has come to end. The contractors workers cannot be treated as workers of principal employer. They have no right for regularization.

5. That recruitment of the employment in public sector undertaking is required to be made through Employment Exchange. Claim of Union is made in order to contract workers entered through back door entry instead of regular appointment. Employment in the mine is made on the basis of sanctioned post, manpower, project report approved by Government of India. Work given to the contractors was only for drivage of incline shaft to reach the coal seam. Said work was of temporary nature. Contractors were neither engaged in perennial nature of job or in prohibited category of work. 2nd party denied that the workman whose names appeared in annexure were employed in Kurja underground mine, no appointment letter was given by management. It is denied that workmen were engaged in prohibited category of work. It is denied that workmen were directly employed in mining operation in Kurja from 1989 to 1992. The contractor started job after May 1990. There was no question of working in 1989. It is denied that the workers were engaged by the management and their work was supervised by the management. 2nd party submits that work of raising coal was not done by the contractor's labours. Award in R/7/89 is not relevant. Said award is subjudice before Hon'ble High Court, Jabalpur in Writ Petition 2959/92. It is denied that management adopted discriminatory attitude towards workers. It is denied that SECL is state within meaning of Article 12 of the constitution. 2nd party prays that reference be answered in its favour.

6. Ist party filed rejoinder at Page 7/1 to 7/2 reiterating his contentions in statement of claim. That the workmen were working in prohibited category. They were doing job of perennial nature. It is denied that contractor was only for name sake or contract was camouflage. Claim for regularization of workers be allowed.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether it is proved that contractors Mazhar Ali and Nalanda Enterprises engaged by 2 nd party were bogus/camouflage?	In Negative
(ii) Whether it is proved that workers were engaged for work of prohibited category?	In Affirmative
(iii) Whether action of the management of Kurja Underground Project under Hasdeo Area of SECL in denying regularization to 95 workmen (list enclosed) engaged by 2 contractors namely S/Shri Mazar Ali and	Partly in Negative in respect of 4 workmen namely Foolchand Yadav, Loknath Yadav S/o Rammilan, Bodhan S/o Ramlal and Awadhram S/o Bohrilal

M/s. Nalanda Enterprises during the years 1989 to 92 is legal and justified?	
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. Point No.1- Ist party workmen pleaded that workman shown in the list were employed in Kurja were directly engaged by the management. Ist party pleaded that the contractor was nothing but camouflage to deny right of regularization of the workman. Management has denied those contentions of Ist party. Though the reference pertains to 95 workers in the list enclosed, the list of workers is not seen with the order of reference or in the record. Affidavit of Santosh Kumar Baiga, Raju S/o Prabhu filed by Ist party. However they did not turn up for their cross-examination. Identical affidavit of Foolchand Yadav, Loknath Yadav, Bodhram Ramlal, Awadhram, Mohrilal are filed on behalf of Ist party. All of them in their affidavit of evidence stated that they were working in Kurja colliery during 1989 to 1992 under direct control and supervision of the management. According to management, contractor Mazhar Ali employed them but infact the management directly employed them. They were directly working under supervision and control of the management. In addition, Bodhan and Awadhram in his affidavit says Mining Sirdar used to supervise his work and used to supply materials for mining operation. Officers of the company used to mark attendance. In his cross-examination, Foolchand says his name was sent through Employment Exchange. He was not interviewed. Same interrogation was made from him, appointment letter was produced by him. He was terminated in 1992. His signatures were taken by officers of the Kurja mine. Overman Rangilal had interrogated him. He denies that he was working as contract labour Loknath in his cross-examiantion says he cannot read Hindi, English. He is not literate. He doesnot understand halafnama/ affidavit. He was not cross-examined on facts stated in his affidavit. Budhram in his cross-examination says he could not tell his date of birth he has told his age as 19-20- years. In 1989, contractor has engaged him, month is not recollect to him. Again Shri Rajbhan contractor had engaged him on work under Mazhar Ali, contractor. He did not work under Nalanda Enterprises. He was unable to tell what work was given to the contractors. Contractor has engaged him on wages. Point where he was working contractors persons were not attending. He was supplied instrument like spade etc. he denies that instruments were supplied by contractor. Wages were paid near office. The person of contractor used to remain present at the time of payment. His attendance was marked in "C" Register. He knows about Form B. it is like identity card. Awadhram in his cross says he doesnot know his date of birth. That he worked in Kurja mine. He was unable to tell its month or year. Initially he was engaged by contractor Upadhyay. Thereafter by Brijbhan working under contractor Mazhar Ali. He did not hear about contractor Nalanda Enterprises. Employee of mine Rangilal was giving him instruction about work. The person of contractor used to remain present along with Mining Sirdar. The instrument spade, crewbar etc. were supplied by mining Sirdar. Rangilal Babu were giving instruction for work. Wages were paid by Brijpal. The Mine officer used to remain present at the time of payment. Mazhar Ali filed affidavit of evidence that he received contract for work of drivage incline shaft at Kurja mine as per tender notice dated 14-10-89. From his evidence, documents Exhibit M-1 to M-9/1 to 9/3 about tender and contract are admitted. In his cross-examination, Mazhar Ali says original of documents M-1 to 9 are not in his custody. He claims ignorance that for drivage work, first map is required to be prepared. The management officers had given him instructions about the drivage work. No separate permission was given to him for the drivage work. Headlight, cap were supplied by the management.

9. Management's witness Shakun Singh on the point that licence for engaging contractors Nalanda Enterprises was taken. From his evidence, documents Exhibit M-18 to 22/1 to 22/2 are admitted in evidence. Said witness in his cross-examination was unable to tell who signed on Exhibit M-10 to 12. In his cross-examination, after re-examination, the witness says the licence register brought by him entry date 11-12-14 was not appearing signature of ALC.

10. Shri Biresh Shukla management's witness filed affidavit of evidence about the contractor Nalanda Enterprises were engaged for drivate of incline shaft. Work of Nalanda Enterprises commenced on 9-5-90 completion on 18-11-90. From his evidence, documetns related to tender, notice, agreement etc. are admitted at Exhibit M-10 to 17. In his cross-examination, witness of management says he was posted as oversear at Kurja project on 1-2-98. He admits that tender related documents were got exhibited at Bilaspur head office. He was not concerned with the tender agreement. In his further cross-examination, witness says the attendance of employees is marked in Form B, C. contractor was maintaining attendance of his employees, witness was unable to tell under which register, attendance of contractor's employees was maintained. Contractor was making payment to these workers in presence of officers of the management. He agrees that before starting work, map used to be prepared. During whole cross-examination of management's witness, Atul Singh, Biresh Shukla, no suggestion is given that contract was sham, bogus or camouflage. Witness of Ist party in their evidence stated that wages were paid by office of the management and officer used to remain present. Awadhram and Bodhram in their cross have admitted that they were engaged by the contractor.

11. The documents produced by 2nd party Exhibit M-10 shows work of drivage of 2 incline shaft for kurja underground for amount of Rs.24,96,000, tender was issued. Exhibit M-12 shows time of opening and closing tender. Exhibit M-13 shows tender was issued for drivage of 2 incline shafts. Other details are shown similar to Exhibit M-10. The security deposit is shown Rs.24,960. The details of the work are shown 2 incline shaft size 4.80 m x 2.40 m & 160 m length. The terms of agreement Exhibit M-14 provides that contractor shall be guided by the design and specification already indicated. The contractor shall provide their own machinery. The contractor was provided skilled, unskilled, managerial staff adequate for execution of work. The details of the work are given in tender Exhibit M-15. The articles of agreement M-16 shows details of the work to be carried and liabilities of contractor. In Exhibit M-17, the contractor was required to deposit Rs.25,040 towards security deposit. Deduction of 2 %, 8 % surcharge from running bills, similar provisions are found in the documents M-1 to 9 w.r.t. contractor Mazhar Ali. Management has produced licence at Exhibit M-10,19, 21. Licence is also produced at Exhibit M-12. The details of the work are shown in Exhibit M-1,2. When the contractors were engaged calling tender, they were required to deposit huge amount and further deduction from running bills only on the ground that workman says that they were employed by management whereas Bodhan ram and Awadhram in their cross examination stated that they were engaged by contractor. Their evidence that workman was engaged by the management and contracts are mere camouflage are ruse is not consistent.

12. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in case between-

General Manager (OSD), Bangal Nagpur Cotton Mills versus Bharat lal and another reported in 2011(1)SCC-635. Their Lordship dealing with whether agreement between Appellant and 2nd party respondent was sham and they were direct employees. Their Lordship held it was for employee to aver and prove that he was paid salary directly by principal employer and not by contractor. Merely because officers of principal employer gave some instructions to employee of contractor that would not make him employee of principal employer.

Reliance is also placed in case of Airport Authority of India, Mumbai and Indian Airport Kamgar Union and others reported in 2011-I-LLJ-211(Bom). In para-36, her ladyship discussed it may be added that the culture of contract labour has thrown open the doors of contractual and commercial establishments to unqualified and unskilled workers who would otherwise not be able to obtain any employment in an industry. Considering ratio in Umadevi Nambiyar versus T.C.Sidhan, their Ladyship held they cannot be ipso facto regularized if they are found to be lacking in the requisite qualifications and if they are not employed as per procedure established by law under which permanent employees doing similar work are employed even if they are held to be the workmen of the petitioner.

Ratio held in Steel Authority of India Ltd and another versus State of West Bengal and others reported in 2009-I-LLJ-241(SC) their Lordship considering no pleading by workmen that contract was sham and bogus- the reference was quashed.

In present case, contract was sham and bogus is pleaded by Ist party in Para 4 & 12 of statement of claim. Therefore ratio cannot be applied to case at hand.

Reliance is also placed on ratio held in case between workmen of Nilgiri Coop Mkt.society Ltd versus State of TN and others reported in 2004(3)SCC-514. Their Lordship dealing with employer employee relationship existed or whether the employee of Principal employer or contractor, their Lordship laid test for determination of organization or of control and supervision not the only decisive tests. Other factors to be considered different tests held applicable in different facts and circumstances. Their Lordship dealing with contract labour – whether the contract was sham or camouflage held not a question of law to be decided by Tribunal or Labour Court by piercing the veil, having regard to the provisions of the Act, where a definite plea is raised.

In present case, evidence of all 4 witnesses of Ist party is not consistent about their engagement by management. Rather as argued by Shri A.K.Shashi, the term of reference shows claim for regularization of the workers employed by Mazhar Ali and Nalanda Enterprises. In their affidavit of evidence, witnesses of Ist party claimed that they were engaged by management. However their evidence about payment of wages and control of work is also not consistent as discussed above.

13. Shri A.K.Shashi relies on ratio held in case between

International Airport Authority of India versus International Air Cargo Workers Union and another reported in 2009I3SCC-374. Their Lordship held whether Labour contract genuine or sham direction ad control over employees held whether direction and control is with principal employer or with contractor has to be determined with reference to factors like who pays salary who has power to initiate disciplinary action to remove/ dismiss employee from service who can tell employee the way work should be done etc.

No such evidence is adduced witnesses of Ist party. Evidence about payment of wages and control is not cogent and consistent. The contractors Mazhar Ali and Nalanga enterprises calling tender. They have deposited those amounts. The establishment of 2nd party is registered under CL(R&A)Act. The evidence adduced by witness of Ist party is not

cogent that workers were engaged by management. Evidence is not sufficient to hold that the contractors Mazhar Ali and Nalanda Enterprises were ruse/ camouflage. For above reasons, I record my finding in Point No.1 in Negative.

14. Point No.2- In statement of claim, para3, Ist party Union has prayed that concerned workmen were doing job of prohibited category like driving of stone, stone cutting, underground mine, overburden removal for coal raising. In para-11, it is pleaded that concerned workmen were doing same and perennial nature of job which were done by regular workmen. In Para 7 to 9 of Written Statement, 2nd party has pleaded that two contractors Mazhar Ali and Nalanda Enterprises were engaged for drivage of coal of incline shaft. The contractor were engaged for drivage of 2 incline shaft. In Para-10, 2nd party pleaded that drivage of incline shaft is not in prohibited category of work. In para-6 of the Written Statement 2nd party has pleaded that Government of India by Notification prohibited certain category of work- raising or raising cum selling of coal, coal loading and unloading, overburden removal and earth cutting, soft coke manufacturing, driving of stone drifts and miscellaneous stone cutting underground. In tender documents Exhibit M-19 to 22, the work given to contractors is shown drivage of 2 numbers of incline shaft value Rs.24,96,000 etc. in Para 4 of the Written Statement, 2nd party has pleaded that Kurja underground has started its production since October 1992. The tender documents produced on record relates to year 1990-91. Evidence of Ist party workmen is that they were working in Kurja underground mine in 1989 to 1992. In Exhibit W-22(2) contractors Mazhar Ali and Nalanda Enterprises were engaged by the management for construction of side wall and roof of incline. Contractor Nalanda Enterprises was engaged for drivage of 2 number of incline shaft for Kurja. Though Ist party has pleaded that work is of prohibited category, 2nd party in its Written Statement Para 6 has pleaded that Government has prohibited work of particular nature issuing notification however both parties have not taken pains to produce notification issued by Government. When work of production in Kurja mine started in October 1992 as per para 4 of the Written Statement, it is apparent that in 1989 to 1992, the preparatory work of the mine was started particularly drivage of 2 incline shaft.

Section 2(b) of Mines Act 1952 defines- A person is said to be employed in mine who works as Manager or works under appointment by the owner, agent or manager of the mine or with the knowledge of the Manager whether for wages or not.

(vii) in any kind of work whatsoever which is preparatory or incidental to or connected with mining operations.

The work of drivage is also mentioned as prohibited driving of stone drifts is also mentioned in Para-6 of the Written Statement as prohibited work. Though both parties have not produced notification issued by Government regarding prohibited work from Para-4 of the Written Statement, it is clear that drivage work for which both contractors were engaged before production in Kurja was started in October 1992 is certainly work of prohibited category. For above reasons, I record my finding in Point No.2 in Affirmative.

15. Point No.3- In view of my finding in Point No.2 Ist party workmen were engaged for drivage of 2 incline shaft before production in Kurja Mine was started on 1-10-92, workmen were engaged for prohibited category of work. 2nd party has denied regularization of Ist party workmen only 95 workers are connected with the dispute. The list of workers is not received along with order of reference. Management had requested better particulars of all workers. Particulars of all workers are not submitted. Only 4 workers namely Foolchand Yadav, Loknath Yadav S/o Rammilan, Bodhan S/o Ramlal and Awadhram S/o Bohrilal have appeared for their evidence. Their identity is not challenged. In their evidence in cross-examination, their evidence is not shattered about their working in Kurja mine whether Ist party workmen are entitled for regularization when they are not in employment after 1992. All witnesses have stated in their affidavit they are unemployed.

16. Shri A.K.Shashi relies on ratio held in case between

Airports Authority of India, Mumbai versus Indian Airport Kamgar Union and others reported in 2011-I-LLJ-211(Bom). Award allowing reference and directing contract labours to be treated as permanent employees was held unsustainable.

The facts of present case are different in view of my finding in Point No.2 workers were engaged for prohibited category of work.

Shri R.C.Shrivastava for Ist party did not submit any citation in the matter. Copy of award in R/44/05 is submitted for perusal. As facts of present case are not comparable, copy of award is absolutely not beneficial to decide the point involved. However ratio held in SAIL and others versus National Union Water Front workers and others reported in 2001(7)SCC-1. In para 125 of the judgment, their Lordship have given the abstracts of their discussion. Judgment in Air India case is overruled prospectively.

Clause (5) held on issuance of prohibition notification under Section 10(1) of CLRA Act prohibiting employment of contract labor or otherwise in an industrial dispute brought before it by any contract labour in regard to the conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of

contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with the various beneficial legislations so as to deprive the workers of the benefit thereunder.

If the contract is found to be genuine and prohibition notification under Section 10(1) of CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

It is clear that the management has to give preference to contract labours. However management has denied work to Ist party workers. Consequently 4 workers namely Foolchand Yadav, Loknath Yadav S/o Rammilan, Bodhan S/o Ramlal and Awadhram S/o Bohrilal are entitled for absorption. So far as claim whether they are entitled for backwages. The evidence of all the witnesses namely Foolchand Yadav, Loknath Yadav S/o Rammilan, Bodhan S/o Ramlal and Awadhram S/o Bohrilal is cogent that they are unemployed. Management has not adduced evidence about their gainful employment. Considering nature of evidence and dispute was immediately raised, 25 % backwages from date of reference would be appropriate. Accordingly I record my finding in Point No.3.

17. In the result, award is passed as under:-

- (1) The action of the management is not legal w.r.t. 4 workmen namely Foolchand Yadav, Loknath Yadav S/o Rammilan, Bodhan S/o Ramlal and Awadhram S/o Bohrilal.
- (2) Management is directed to absorb/reinstate 4 workers namely Foolchand Yadav, Loknath Yadav S/o Rammilan, Bodhan S/o Ramlal and Awadhram S/o Bohrilal in service with continuity of service with 25 % backwages from date of order of reference.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1492.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 5/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/340/2007-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1492.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of WCL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/340/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/5/2008

General Secretary,
Samyukta Koyla Mazdoor Sangh (AITUC),
CRP Camp Iklehra,
Distt. Chhindwara
Chhindwara

...Workman/Union

Versus

Chief General Manager,
WCL, Pench Area,
PO Parasia,
Chhindwara

...Management

AWARD

Passed on this 19th day of May 2017

1. As per letter dated 3-1-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/340/2007-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of M/S WCL in dismissing Shri Ashok S/o Shri Kashi Ram from service w.e.f. 16-8-02 is legal and justified? If not, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Workman submits that he was appointed in 1990. He was transferred to Gajando Mine as Tub Loader. He suddenly fell ill and was unable to attend duty. On 15-4-02, chargesheet was issued to workman. He submitted reply to the chargesheet on 23-4-02. Management was not satisfied with reply to chargesheet. Enquiry was conducted against him. Workman had attended enquiry proceeding but he was shown absent in Enquiry Proceeding. In next date of enquiry, he was allowed Defence Assistant. Workman remained absent on enquiry. Enquiry was fixed on 25-5-02. Enquiry was not properly conducted. Ex parte enquiry was conducted, letter in English was issued to workman giving last chance. It is reiterated that services of Ist party terminated on 11-8-02 is illegal. On such ground, he prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 6/1 to 6/5 opposing claim of workman. 2nd party did not dispute that workman was employed as tub loader in 1990. He was transferred to Gajando mines. That workman was remaining unauthorized absent. Reply given by workman to chargesheet was not satisfactory. Therefore it was decided to conduct enquiry conducted against him. Shri V.K.Nigam Sr.Executive Engineer was appointed as Enquiry Officer and Shri A.B.Nayak Survey Officer was appointed as Management Representative. On request of workman, Shri Bharat Singh Sakrawar was allowed as Defence Assistant. Enquiry was conducted on various dates. Workman remained absent. Notice was affixed at his residence. On 30-5-02, enquiry was conducted ex parte after recording statement of management's representative and documents produced. Enquiry Officer submitted his findings holding workman guilty. After showcause notice, workman was dismissed from service. Above contents are reiterated in parawise reply in the Written Statement. 2nd party submits that workman is terminated for proved misconduct of unauthorized absence. Reference be answered in favour of management.

4. Enquiry conducted against workman is found legal as per order dated 28-9-16.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct of unauthorized absence alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

6. The term of reference pertains to legality of termination of service of workman. Chargesheet Exhibit M-1 was issued to workman for unauthorized absence from 18-9-01 till date of the issue of chargesheet 15-4-02 for about 7 months. Enquiry conducted against workman is found proper and legal. Enquiry proceeding is produced at Exhibit M-5. Statement of management's representative Shri C.P.Tiwari recorded before Enquiry Officer shows workman remained absent from duty without intimation. The attendance of workman during the period October to December 2001 was Nil, January 2002 to March 2002- Nil as per the bonus register of 2002. Attendance of Ist party workman in April May 2002 was Nil. Evidence of management's representative remained unchallenged as workman did not

participate in Enquiry Proceedings. Evidence on record is sufficient to establish alleged misconduct of unauthorised absence. For above reasons, I record my finding in Point No.1 in Affirmative.

7. Point No.2- In view of my finding in Point No.1 misconduct of unauthorized absence for about 7 months is established. Workman has not participated in reference proceeding. He also not participated in Enquiry Proceeding. Considering period of unauthorized absence, punishment of dismissal against workman cannot be said shockingly disproportionate. No interference in punishment of dismissal would be justified. For above reasons, I record my finding in Point No.2 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of M/S WCL in dismissing Shri Ashok S/o Shri Kashi Ram from service w.e.f. 16-8-02 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 209/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/271/1996-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 209/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of SECL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/271/1996-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/209/97

Shri I.B. Dwivedi,
Secretary, (C&S), NCWF,
Post Norwozabad,
Distt. Shahdol (MP)

...Workman

Versus

General Manager,
SECL, Post Nowrozabad,
Johilla Area,
Shahdol (MP)

...Management

AWARD

Passed on this 3rd day of April 2017

1. As per letter dated 27-6-97/ 15-7-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/271/96-IR(C-II). The dispute under reference relates to:

"Whether the action of the management of Johilla Area of SECL in employing 12 labourers (list enclosed) at the Saw Machines of Nowrozabad colliery which is a mining activity at less than the rates of wages fixed under NCWA-I to V and also in not regularizing their services on the rolls of the company from their dates of appointment is legal and justified? If not to what relief are the workmen entitled and from which date?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim through General Secretary at Page 4.1 to 4/4. Case of Ist party Union is that Union spoused the dispute of workers. After its merger with RCWF Union is registered under Trade Union Act 1926. It is competent to raise the dispute. That 12 workmen shown in the list along with order of reference were direct employees of the management of 2nd party. Those employees were employed for cutting of timber etc. the sawmill is in name of SECL and licence is also taken in name of SECL. Job done by say mill partly by engaging company employees and by contract labours. Previously all employees were paid by management on contract rate. That the rate are fixed by SECL, Johilla Area. All the economic and administrative control remains with the management of SECL, Nowrozabad. The workmen are entitled to Cat-II wages as per NCWA-V. that it is further submitted that said work is of permanent nature. Saw mill work done by those workers is not of temporary character. The workers are to be employed for suitable long period. Keeping them in service referred on jaw machine. The workers cannot be treated as casual or temporary workers. Workers are not getting full amount of Cat-II to NCWA-V. That 12 workers employed in saw machine at Nowrozabad colliery are directly engaged by the management.

3. Ist party Union further submits that since most of the workman as shown in the list along with reference completed more than 4-5 years continuous employment in saw mill at Nowrozabad colliery. They were entitled to be regularized departmentally. That the subject was discussed in IR meeting with RCWF Union on 8th & 9th November 94. On the point No.7, it was decided that SECL was advised to process note in that regard. That management adopted practice carrying work amounts to unfair labour practice and act of victimization. All 12 workers are physically fit to carry out the work. That management of SECL has also entered into various agreement with other Unions. The workers employed directly by SECL have been regularized. On such ground, Ist party Union submits that workers are entitled for regularization. They have been deployed in the mining job of prohibited category. All workers were paid Rs.15-20 per day less wages than prescribed under NCWA-V. on such ground Union prays for regularization of services of 12 workers shown in list with reference.

4. 2nd party management filed Written Statement at Page 6/1 to 6/4 opposing claim of Ist party. That SECL is undertaking of Government of India registered under Company's Act. Nowrozabad colliery is under administrative control of Johilla Area. That reference made by Government is bad. That sawmills have been established for preparation of sleepers and planks. Said work is not of permanent nature. As the planks and sleepers can be used and reused for number of times for roof support. The same are discarded only when becomes totally useless. It is reiterated that they are not of perennial nature. Said activity is not mining activity defined under CL(R&A)Act. Normally sawmill work is carried through contractor as and when necessity arise. It is further submitted that minor penalty is advanced in place of roof support. The saw mills are totally abandoned and no work is going on. It is denied that 12 persons were engaged in saw mill. The contentions of Ist party that all 12 persons were engaged in saw mill is false. Union has not produced copy of bylaws to indicate that it is authority to spouse cause of the claimants. That as and when necessity arise, 2nd party issued work orders to contractors to prepare pranks. Quantity of work and the contractor engaged. Workers to execute the work as per order. The claimants are engaged by contractor directly and the saw mill not operating permanently. The claimants are not directly engaged by the management. The demand of Ist party pertaining to engagement of 12 persons at a time is denied. It is submitted that contractor was supposed to deliver the finished goods. The work was carried under control of the contractor and not working under supervisors of the management. That workman has not specified which of the claimant have completed 3-4 years in employment. That under CL(R&A)Act, work is prohibited after taking into consideration various facts. The work of making rafters on saw mills was not prohibited. Said work is not of permanent nature. There is no employer employee relationship between claimants and management of 2nd party. On such ground, 2nd party submits claim of Ist party deserves to be dismissed.

5. Ist party filed rejoinder at Page 10/1 to 10/4 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Johilla Area of SECL in employing 12 labourers (list enclosed) at the Saw Machines of Nowrozabad colliery which is a mining activity at less than the	Ist party employees No.1,3,7,9,10 are employees of 2 nd party. Their claim for regularization and wages as per NCWA-IV is not established.
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rates of wages fixed under NCWA-I to V and also in not regularizing their services on the rolls of the company from their dates of appointment is legal and justified?	
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. The term of reference pertains to payment of less wages, denial of regularization to the labours shown in the list along with order of reference. In support of claim of Ist party, identical affidavit of evidence of Alok Kumar Babulal, Rajendra Prasad, Mukesh Kumar, Lakanlal, Sunil Singh are filed. All the witnesses of Ist party claimants that they were engaged as casual labour in saw machine located at Nowrozabad since 1993. That saw mill is owned by SECL. Licence is held by the management. Saw machine is used for production of sleepers from the timber. Sleepers used for support of roof galaxy inside mines. The labours were engaged for cutting timber on saw machine. Some labours were required at saw machine. Management used to employ two types of work at saw machine. Same work was being taken management directly from its employees and some casual labours engaged. That the work of saw machine is of perennial nature. The Ist party workmen were engaged as casual labours, they were entitled to wages under NCWA. Their services were not regularized.

8. Shri Rajendra Prasad in his cross says he passed 10th standard in 1985, he was of 15-16 years age. His affidavit of evidence is in English. However he claims he is aware of its contents. That he did not work on contract in SECL. He claims ignorance where the sleepers were used underground. After the wooden load become useless, other load was not supplied. The sleepers / rapters life was about 15-20 years. Recently use of steel plates is started for roof support. He denies that only two labours were required for running saw mill. According to the witness about 20-25 labours were required for working on saw mill. He was doing work of cleaning in wooden west. His name was not sponsored through Employment Exchange. He was engaged on work by Shri B.K.Jain supervisor. The post was not advertised in newspaper. In entire cross examination, witness has denied that he was not working in SECL.

9. Cross examination of Mukesh Kumar is devoted on the point that he was engaged on work by Mr.Jain. instructions for working were given to him by Mr.Jain. in 1993, he was interviewed allowed and engaged on work. He was doing work of cleaning wooden on saw mill. Other persons Ibrahim, Lakan, Rajendra were working with him. His affidavit was prepared by the Advocate. He was getting 15-20 Rs per day. He was not getting paid leave. Wages were paid separately. He denies that Ibrahim was contractor and he was making payments. That he worked continuously from 93 to 98. Shri Lakanlal in his cross says he did not remember whole contents of the affidavit of evidence. Affidavit of his evidence was in English was explained to him in Hindi. He claims ignorance about relation between him and the management. He claims ignorance about NCWA & job of permanent or perennial nature. Shri Lakanlal in his cross examination was unable to tell how long the wooden sleepers were in use in the mine. The sleepers were used for roof support in the mine. That the wooden sleepers were used still plates were not used. He denies that since 1995, wooden sleepers are not used in the mine.

10. Shri Sunil Singh in his cross examination says he was engaged by Ibrahim contractor, he was doing work of cutting wood and cleaning wooden dust. 10-15 employees were required for the work. He denies that only two labours were working on saw mill. The documents produced on record Exhibit M-1 shows payment of Rs.400/. Quantity of sleepers is shown 20,000 rate- Rs.20/- each. Exhibit M-2 also shows payment of Rs.4000 for 200 sleepers, M-3 shows payment of Rs.8000 for payment under Exhibit M-1 is shown on 1-10-94, payment under M-2 is shown on 5-3-92, Exhibit M-3 payment for April 93 under Exhibit M-4 in colliery used on 5-5-94 is shown. In M-5, 6, Ibrahim was paid Rs.705/- for two spells of 15 days in April 1990. Ibrahim is shown as contractor. In M-6, June 90. In those documents payment is directly made to Ibrahim. In certificate Exhibit M-7, Ibrahim is shown as contractor for the period 1-4-96 to 30-4-96. In Exhibit M-19,15,16 payment of Rs.1932 is shown to Ibrahim as workman name of contractor is also shown as Ibrahim. In documents Exhibit M-8 to 14 one Durga Prasad is shown as contractor. Name of Ibrahim is shown as Mistry Mazdoor and payment of Rs.1500, 3125, 1365, 1125, 2835, 2835, 2295 & 4050 are directly made to Ibrahim during the period September 97, June 97, April 97, May 98, June 98, August 98, October 98. In Exhibit M-18, Durga Prasad is shown as contractor for the work of wooden sleepers giving the size of sleepers. Exhibit M-21 is guidelines for engaging workers in WCL.

11. Documentary evidence shows that Shri Ibrahim was directly paid wages. In some documents he himself was shown as contractor. In other documents, Durga Prasad has shown contractor. However in Written Statement, management has not disclosed name of contractor. Labour himself working on saw mill was making sleepers is shown contractor. Contractor is defined under Section 2 of C.L(R&A)Act. Contractor in relation to an establishment means a person who undertakes to produce a given result through contract labour or who supplies contract labour for any work

of establishment and includes a sub contractor. Any document is not produced about contract between management of SECL and Durga Prasad. In documents piece rate of sleeper are shown Rs.20/- . Workman engaged on piece rate cannot be said contractor under Section 2(c) of the Act.

12. 2nd party has contented that the work of making sleeper on sawmill was of perennial nature. Working of coal mine at Nowrozabad mine, saw mill was established by the management, saw mill was not separate establishment. No documents are produced that saw mill was seasonal establishment. It is clear from evidence that saw mill was part of mine of SECL. The documents are produced by Ist party. Any documents are not produced about attendance of workman. Management by so called contractor or contractor had made payments to Ist party. The contentions of management that labours were engaged by contractor cannot be accepted. All the Ist party claimants were employees of SECL.

13. W.r.t. claim of Ist party sought payment of wages Ist party has not produced NCWA-IV. Any provision is not brought to my notice that the casual labours were entitled to wages under NCWA therefore the claim of Ist party in that regard cannot be accepted. Ist party claimant have not brought any provision to my notice that casual labours engaged by Ist party is entitled to regularization. In absence of any specific provisions, the claim for regularization of Ist party cannot be accepted. Accordingly I record my finding in Point No.1.

14. Point No.2. The evidence of witnesses of Ist party that they were working from 1993 to 98 is not shattered. Management has not produced documents like muster roll, attendance register. Documents Exhibit M-12 to 18 pertains to payments made to Ibrahim. The evidence of Alok Kumar , Rajendra Prasad, Mukesh Kumar, Lakanlal, Sunil Singh that they were working continuously since 1993 is not shattered. Their services are not regularized. Without following any procedure for terminating their services, they have been disengaged by not assigning work certainly it amounts to retrenchment.

15. Management filed affidavit of Tulsidhar Kurup and Shri Radhakishan Mishra. The documents produced by management are exhibited. Shri A.K.Shashi on the point relies on ratio held in case between-

Himmat Singh and others versus ICI India Ltd and others reported in 2008(3)SCC-571. Their Lordship dealing with Section 6N of UP ID Act w.r.t. claim of labour employed by contractor claiming permanent status. Their Lordship held that the permanent status claimed by labours was without any merit. In present case, evidence on record shows workmen were not engaged by contractor but they were casual labours engaged by management itself. The ratio cannot be applied to case at hand.

Shri A.K.Shashi relies on ratio held in case between Oshiar Prasad and others versus employers in relation to management of Sudamdih Coal Washery of BCCL, Dhanbad, Jharkhand reported in 2015-I-LLJ-513(SC). Their Lordship held merely because workers working in one project by itself not enough to give any right to claim parity with claim of others. Their Lordship also observed that services of appellants were terminated long back prior to making reference. Appellants not in service either of contractor or BCCL on date of making reference. Their Lordship held that appellants entitled to claim retrenchment compensation from contractor BCCL.

In present case, claimants Ibrahim, Rajendra Prasad, Alok Kumar, Mukesh Kumar and Lakanlal established that they were working with SECL. Their services were not terminated following Section 25-F of ID Act though the term of reference doesnot include the legality of termination. Considering ratio held in case of Oshiar Prasad, relief could be moulded as services of above claimants were disengaged without following any kind of process of termination. Considering the period of working from 1993 to 1998 and the claimants were receiving wages between 15-20 Rs per day, compensation Rs.50,000 for each of the above claimants would be appropriate. Claim of rest of the claimants is not established as they have not established evidence in support of their claim. For above reasons, I record my finding that claimants No.1,3,7,9 & 10 are entitled to compensation Rs.50,000/- each. Accordingly I record my finding in Point No.2.

16. In the result, award is passed as under:-

- (1) The Ist party employees are employees of 2nd party. Their claim for regularization and wages as per NCWA-IV is not established.
- (2) 2nd party is directed to pay compensation Rs.50,000/- to each of the claimants No.1,3,7,9 & 10.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1494.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 97/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/158/2007-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of SECL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/158/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/97/2007

The Area Secretary,
SKMS Union (AITUC),
SECL, Chhal Project Chhal,
Raigarh Distt.
Chhattisgarh

...Workman/Union

Versus

Chief General Manager,
SECL, Rajgarh Area,
Behind Collectorate Chhota Attermunda,
PB No.27, Raigarh (CG)

...Management

AWARD

Passed on this 19th day of May 2017

1. As per letter dated 26-9-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/158/2007-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Mand Coal Mines, SECL Chhal Sub Area, Raigarh, Chhattisgarh in changing service condition i.e.

- (a) Converting from piece rated scale of pay in respect of 300 workmen of Mand Coal Mines, SECL Chhal Sub area, Distt. Raigarh, Chhattisgarh and subsequent placing them in minimum Category I Scale of pay (MCWA-V).
- (b) Unilateral obtaining of option letters from each of the 300 workmen of Mand Coal Mines SECL Chhal Sub Area, Raigarh Chhattisgarh for each conversion and subsequent signing of Form H settlement on such conversion of pay.
- (c) And subsequent reduction of SPRA following such conversion in scale of pay from piece rated to time rated in respect of 300 workmen of Mand Coal Mines of SECL, Chhal Sub Area, Raigarh, Chhattisgarh

are legal and justified? If not, to what relief the workmen are entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim through Area Secretary at Page 2/1 to 2/5. Case of Ist party Union is that in Mand Coal Mines of SECL, Rajgarh, about 300 piece rated labours were working, few piece rated labours were working since 1970 to 1973. Other labours came on transfer from other mines of SECL. The list of 261 labours enclosed. During 1996-97, working of Mand Coal Mines was reduced from 3 to 2 shift and 2 shift to one shift ultimately the mine was closed in 1997. Suptd. Of Mand Coal Mines issued circular dated 19-7-97 directing all piece rated labour to exercise their option in writing in a prescribed format for conversion from piece rated to time rated scale/ grade within a week and those loaders who did not want to give their option to the Manager, Mand Mines about their transfer to out of Raigarh Area. That management deliberately did not mention anywhere in the circular that on conversion from piece rated to time rated, their pay shall not be protected and they would be fixed at the lowest stage of basic pay of category I as per NCWA-V. That said circular issued by Mines Superintendent was not less than a threatening to the piece rated loaders working in Mand Mines in case they do not fill up option form in prescribed format for their conversion to time rated scale, they will be transferred out of Raigarh Area. Said circular was issued to pressurize piece rated loaders to fill up option form for conversion to time rated scale of pay. It is further contended that under threat of transfer, the piece rated loaders had no option except to fill up the option form in prescribed format for their conversion from piece rated to time rated scale of pay as directed by the management. After the options were obtained from obtained from piece rated workers, management issued order of conversion of piece rated loaders to General Category I on 28-11-96, 2-12-96, 9-1-97, 10-10-97, 31-10-97.

3. It is further contended that after conversion of piece rated labour to time rated , their pay was fixed at minimum pay scale of Category I as per NCWA. They were not allowed pay protection. That SPRA were being paid to piece rated was stopped resulting in substantial reduction of pay. That management was bound to protect pay of workman. Their pay could not be reduced on conversion except by way of punishment. That in other area, pay protection to piece rated labour was given after conversion to time rated pay scale. That pay of piece rated labours was reduced without notice under Section 9-A of ID Act which result in reduction of retirement benefit. Action of the management is illegal. Subsequently management obtained signatures of workman on Form H showing settlement between individual workman and the management contrary to Rule 58(4) under ID Act. Said settlement is illegal. It is reiterated that option for conversion of piece rated to time rated was obtained under threat of transfer denying pay protection. That the concerned workmen are entitled to pay protection, their pay cannot be less than pay of piece rated workers. On such ground, 2nd party is praying to hold that action of the management is illegal. Obtaining settlement in Form H reducing pay without notice under Section 9-A is illegal. That the workmen are entitled to pay protection after conversion from piece rated to time rated pay.

4. 2nd party filed Written Statement at Page 3/1 to 3/8 opposing claim of Union. 2nd party contends that terms of reference are contrary to the facts highly prejudicial to the management. That appropriate Government arrived to conclusion, option letters were received unilaterally. The terms of reference about reduction of SPRA are incorrect. The option was not received unilaterally. Government exercised excessive jurisdiction while claiming the terms of reference. That 2nd party SECL is subsidiary of Coal India Ltd. Coal Mines are covered by settlements between Union and management known as NCWA. Coal Mines were nationalized in 1973. Manpower was used for execution of various category of work after modernization and opening of mechanized mines, work of various types was not required to be done manually. Workers were rendered surplus. If employees not agree for alternate job, they are required to be retrenched. To avoid termination of service, management and recognized Union arrived to various settlements time to time. In order to seek direct recruitment, they cannot claim pay protection. It is reiterated that management cannot favour workers violating service conditions violative of Article 14,16 of the constitution, it may lead to industrial unrest.

5. 2nd party further reiterated that in Mand Mine, work was carried manually by loaders. The production of Mand mine was poor causing heavy loss to the management. In 1996-97, Mand Mine was closed. Management despatched notice on board inviting workers working as loader with desire to change their cadre from piece rated to time rated may submit their option. The employee who do not submit such option may be transferred from Mand Mines to other mines. The employees had submitted option for change from piece rated to time rated. After the options were submitted, management changed the employees to time rated job. After option submitted by employees for time rated job employees are not entitled to SPRA. The employees are entitled to gratuity under PG Act. That several discussions were held and settlement in Form H was arrived. The settlement arrived cannot be re-opened there is no merit in the dispute. In para-wise reply, 2nd party did not dispute several workers working as piece rated in Mand Mines. It is denied that circular was issued by Suptd. Of Mines unilaterally. Notice was displayed on notice board inviting option of workers from piece rated to time rated. Workers had submitted option with their open eyes without any objection. The dispute raised by Union is highly belated and not tenable. The dispute is raised after several years claiming pay protection. After conversion from piece rated to time rated, workers did not raise any objection when they were paid as per time rated pay scale wages. 2nd party denies violation of Section 9-A of ID Act as workman had submitted option and also entered in the settlement. Management submits reference be answered in its favour.

6. Ist party submitted rejoinder at Page 4/1 to 4/4 reiterating their contentions in statement of claim. Ist party did not dispute that Mand Mine was closed in 1997. Option was obtained unilaterally in prescribed format. Option were not obtained under threat of transfer is denied.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Mand Coal Mines, SECL Chhal Sub Area, Raigarh, Chhattisgarh in converting from piece rated scale of pay in respect of 300 workmen of Mand Coal Mines, SECL Chhal Sub area, Distt. Raigarh, Chhattisgarh and subsequent placing them in minimum Category I Scale of pay (MCWA-V) is legal?	In Affirmative
(ii) Whether the action of the management of Mand Coal Mines, SECL Chhal Sub Area, Raigarh, Chhattisgarh in obtaining of option letters from each of the 300 workmen of Mand Coal Mines SECL Chhal Sub Area, Raigarh Chhattisgarh for each conversion and subsequent signing of Form H settlement on such conversion of pay is legal?	In Affirmative
(iii) Whether the action of the management of Mand Coal Mines, SECL Chhal Sub Area, Raigarh, Chhattisgarh in subsequent reduction of SPRA following such conversion in scale of pay from piece rated to time rated in respect of 300 workmen of Mand Coal Mines of SECL, Chhal Sub Area, Raigarh, Chhattisgarh is legal and proper?	In Affirmative
(iv) If not, what relief the workmen are entitled to?"	Workmen are not entitled to any relief.

REASONS

8. Points No. 1 to 3:- The term of reference pertains to legality of the obtaining of option letters from each of the 300 workmen of Mand Coal Mines SECL Chhal Sub Area, Raigarh Chhattisgarh for each conversion and subsequent signing of Form H settlement on such conversion of pay, in subsequent reduction of SPRA following such conversion in scale of pay from piece rated to time rated in respect of 300 workmen of Mand Mine of SECL & subsequent reduction of SPRA. All the terms of reference are inter related and needs to be decided collectively. The identical affidavit of evidence are filed by witnesses of Ist party Badku Das, Manharan Suryavanshi, Jawaharlal, Teerathram, Ramayan Prasad, Precisely in their affidavit of evidence, all those workers have stated that they were working in Mand Mine during 1994 to 1997. Ramayan Prasad, Suderam in his affidavit of evidence has stated that 300 piece rated labours were working in Mand Mines. Some labours were working since 1972-73. In affidavit of all the witnesses, it is stated that Mand Mine was closed in 1997. Suptd. Of mines displayed notice inviting option for time rated pay scales. The workers who will not give option, they may submit information for their transfer. That options were given by workers. The options were signed by the workers under threat of transfer. The workers were illiterate. They were not knowing the contents of option signed by them. Their wages were fixed in Cat-I Rs.65.40. All of them claimed pay protection and benefit of SPRA. Shri Ramayan Prasad Suderam filed affidavit of evidence as Secretary of Union has contented that format option forms were obtained under threat of transfer. The signatures on settlement with individual workers obtained from individual workers is illegal. That benefit of opay protection, SPRA is allowed by Baikunthpur area on conversion of piece rated to time rated category. Shri Butuku das in his cross examination says he was working as piece rated labour. In 1997, Mand Mine was closed. Thereafter he was allowed to work at Dharam Mine. He submitted option form. He was working in Dharam Mine on time rated category. He was paid for the work performed by him. He admits that SPRA benefit is not payable to piece rated category. After notice displayed on board, option form was obtained from him. He signed voluntarily on option form. He claims ignorance w.r.t. settlements. Manharan in his cross examination says he was member of the Union since beginning. He was not attending meetings. Union raised dispute in 1997. He was not sangathan mantri in 1997. In his further cross, witness says he had filled option form after notice. After Mandmine was closed, he was allowed to work in Chal Khadan Mine in Mand Mine, he was not working as piece rated labour. Witness corrected that he was working as piece rated labour in Mand Mine. Witness

admitted that time rated employees get certain pay scale. He was working as time rated category in Chal Mine. SPRA benefit is paid to the piecerated employees. He claims ignorance about the settlement.

9. Shri Jawaharlal in his cross examination says he was working on piece rate basis in Mand Mine. Said mine was closed. After closure of Mand mine for transfer of employees to other mine, option forms were obtained. He submitted his option form. He was not aware that on conversion from one category to other category, how much pay he will get. He was not aware that his pay would be reduced after conversion after Mand Mine he was working in Dharam Mine has Haulage operator. Pay for haulage operator has been fixed. He is getting pay as per the fixation. He claims ignorance about the settlement between management and Union w.r.t. SPRA. Witness was unable to read the agreement. Witness further says there was no agreement for pay protection in Mand Mine.

10. Shri Teerath ram in his cross says Mand Mine was closed in 1997, he was working as labour in Mand Mine. After closure of Mand Mine, option as given to the employees for working in other mine. He submitted option. He is working in chal mine in Category I for 4 years. Thereafter he was posted as Tram man. Witness admits management had called option for working in Cat-I. he had accepted the option. Chal Mine is fully mechanized mine. Loading unloading work is carried by machines he is paid wages of Category I in Chal mine. He was promoted to the post of Tram Man as per cadre scheme. He is paid wages of Tram Man.

11. Ramnarayan Prasad Suderam in his cross says piecerated labours get more wages for more work. In Mand mine, work was not carried by machines. In December 97, Mand Mine was closed. Notice was displayed on notice board calling option whether the employees desire payment of retrenchment compensation or to work in other mine though notice was given for closure of mine, the option forms of the employee were got filled through time keeper. He had also given his option form he has studied upto 8th standard. He is acquainted with Hindi. He has no knowledge about mines rules under NCWA Cadre Scheme. Witness admitted that he would not sign the papers without knowing the contents. That he had not voluntarily submitted his option form. He signed the option form but it was filled by MTK. He did not complained about obtaining option forms from him, its copy is not produced. All the workers were paid wages of time rated category. Witness had denied that Form H settlement was entered between management and all the employees. From evidence of witnesses of Ist party, documents are proved. Exhibit W-1 is notice requesting option within one year for conversion from piece rated to time rated. Workers who donot submit option form may contact Mine Manager w.r.t. transfer. Exhibit W-2 is option form of Parmeshwar. The contents of W-2 shows that he was working as piece rated in Mand Mine. On personal reasons, he was facing difficulty in work of loading. He submitted that he may be converted from piece rated to time rated. He corrected on wages of General Mazdoor category. He had no objection for the wages. Exhibit W-3(a,b,c) are office order about conversion of piece rated loader to time rated category on pay scale Rs. 65.40 per day as per NCWA-V. Exhibit W-4 is settlement between Jagatram Parmeshwar and management about conversion from piece rated to time rated on basic wages of Category Rs.165.40.

12. Management has also produced identical documents at Exhibit M-1 consent form submitted by Yadu. On option form submitted regarding other workers are also admitted by Ist party at Page 9/2 to 9/1172. Management also produced document Exhibit M-2, the settlement signed by Samund ram and management. Settlement in Form H signed by other workers are denied by Ist party.

13. Learned counsel for Ist party Shri S.K.Mishra heavily emphasized that the option forms and settlement in Form H are obtained under threats of transfer. However evidence of all the witnesses of Ist party shows that Mand Mines were closed, they were converted to piece rated and allowed to work in Chal and other mines. They were paid wages of Category I under NCWA-V. since 1997 till the dispute raised in the year 2007 any of the workman had not complained about less wages paid to them. They did not complaint that their option forms were obtained by mis-representation or wages would be reduced if SPRA will not be paid. No grievance was made from any of the employees. Therefore the contentions of Ist party that option forms and settlement are obtained from employees under threat of transfer cannot be accepted. So far as Ram Prasad Suderam in his cross examination he says that he had submitted complaint but he did not produce any copy of complaint. Evidence of management's witness Satyapal Singh Bhatti is devoted on the point that workers in Mand Mine had voluntarily submitted option forms and agreed to wages of Category I as per NCWA-V. that coal production of Mand Mine was poor. Said mine was closed after displaying notice board, option forms were submitted for converting from piece rated to time rated category. Workers had also entered settlements in Form H. management's witness in his cross says he was not posted in Mand Mine in 1997. Said mine was closed in 1997. He claims ignorance that 300 piece rated workers were working in Mand Mine were paid SPRA. Management's witness denies that there was practice of paying SPRA on conversion from piece rated to time rated and pay protection was also given. Management's witness claims ignorance whether pay protection was allowed in other area. Management's witness denies that before issuing notice, there was no discussion between management and Union. Management has not produced any document about discussion with the Union. Settlement is entered with individual employees.

14. Learned counsel for Ist party Shri S.K.Mishra emphasized that individual settlement is violative of Rule 54 of ID Act. As argued by Shri A.K.Shashi, Rule 58 pertain to settlement arrived in course of conciliation. Rule 58.4 provides- “Where settlement is arrived between employer and his workman otherwise they are in course of conciliation proceeding etc. Any settlement shall be jointly sent by parties to Central Government. In view of Sub Rule (4) argument advanced by Shri Mishra that individual settlement are contrary to Rule 58 cannot be accepted. As in present case, after submitting option forms, individual employees have entered in settlement in Form H. the settlement is defined under Section 2(p) of ID Act requires that parties to the agreement as may be prescribed and copy thereof has been sent to the appropriate Government and Conciliation Officer.

No pleading are found in that regard. Therefore settlement in Form H cannot be said void, illegal. Since entering into settlement in Form H, workman had acted upon working in time rated category and accepted wages of Category I mazdoor till the dispute was raised. The argument advanced by Shri S.K.Mishra cannot be accepted. Shri S.K.Mishra for Ist party further argued that wages of Ist party are reduced in violation of Section 9-A of ID Act. After conversion of workman from piece rated to time rated category, wages of Category I as per NCWA V were fixed and paid. Wages are reduced. Notice under Section 9-A was not issued. Section 9-A of ID Act provides- notice of change for change in service conditions, reduction of wages is included in Schedule IV under ID Act. Proviso 8 to Section 9-A provides where change is in violation of any settlement or award, no notice shall be required for such change. As workman have voluntarily submitted option forms and also entered in settlement in Form H and acted upon it, change in wages of Ist party to Category I as per NCWA V is not violative of Section 9-A of ID Act.

15. Learned counsel for Ist party Shri S.K.Mishra also pointed out my attention to circular dated 17-2-95 Exhibit M-4. As the Ist party workman have submitted option and also settlement in Form H in view of clause 3 of said circular, Ist party workman are not entitled for pay protection or SPRA.

16. Learned counsel for 2nd party Shri A.K.Shashi relies on judgment in Writ Petition No. 828/97. His Lordship held that in case of piece rated workers appeared to have been converted from piece rated to time rated against selection/voluntary action, pay protection under SPRA will not be taken into account.

17. In view of the evidence option was given by workman and legal aspects discussed above, no detailed discussion is required w.r.t. judgment in Writ Petition No.5979/05 by their Lordship of Bombay High Court, Nagpur bench, and Award by CGIT Nagpur in R/263/00, award by this Tribunal in R/76/14, award in R/79/94 relied by Shri A.K.Shashi. For above reasons, I record my finding in Point No.1 to 3 in Affirmative.

18. In the result, award is passed as under:-

- (1) The action of the management of Mand Coal Mines, SECL Chhal Sub Area, Raigarh, Chhattisgarh in changing service condition of workmen are legal and justified.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 193/1998) को प्रकाशित करती ह, जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/126/1997-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 193/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of SECL, and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/126/1997-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/193/1998**

Smt. Phoolmati Devi, wife
 Pratap Singh, son
 Mahendra Singh, son
 Narendra Singh, son- LRs of Late Shri Manoo Singh
 Through Secretary,
 Janta Mazdoor Sangh (HMS),
 Q.No.A/17, Rly Colony,
 PO Dhanpuri,
 Distt. Shahdol (MP) ...Workman/Union

Versus

Sub Area Manager,
 Amlai Sub Area of SECL,
 PO Amlai Colliery,
 Distt. Shahdol (MP) ...Management

AWARDPassed on this 11th day of May 2017

1. As per letter dated 19-8-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/126/97/IR(CM-II). The dispute under reference relates to:

“Whether the action of the Sub Area Manager, Amlai Sub Area of SECL, Sohagpur Area in dismissing Shri Mannoo Singh, T.No.143, Clerk Grade IstAmalai colliery from company services w.e.f. 20-7-94 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/3. Case of workman is that he was dismissed from service holding that charges alleged against him were proved in Enquiry Proceedings. Enquiry was conducted ex parte. He was not given opportunity for his defence. Before issuing chargesheet any kind of enquiry was not carried. Chargesheet was issued alongwith him to other employees Satyadev Singh clerk working at Amlai colliery. Charges alleged against said Satyadev Singh were identical. That charges alleged against workman Satyadev was dismissed from service. Both workman and said Satyadev challenged dismissal by filing appeal. The Appellate Authority allowed reinstatement of Satyadev Singh. The claim of workman was not considered.

3. Workman further submits that charges alleged against him pertaining to excess payment to some labours on the bills were prepared by workman. That the matter deserves consideration that before the payment is made, the attendance of labours is prepared by other clerk. Bill is prepared by some other clerk, the payment is made by other clerk. Before the payment is made to the labours, the audit is carried by other clerk therefore Ist party along could not be held for excess payment. That the management's witness T.R.Murthy before Enquiry Officer has stated that workman had prepared wage sheets of transport(II). The same discrepancies were noticed by him. Said management's witness also admitted that before payment was made he had himself carried audit. The amount of excess payment made to the labours have already deducted from their salary. That when the work of payment is done by the clerks clerical errors are possible. Only after the audit was made, cash for payment was issued. Ist party workman reiterates that charges alleged against him are not proved. Punishment of dismissal is illegal. On such ground, workman prays for his reinstatement with backwages. Workman died during pendency, his LRs are brought on record. Phoolmati bai-widow ,Pratap Singh- son, Mahendra Singh-son, Narendra Singh, son- LRs of Late Shri Manoo Singh.

4. 2nd party management filed Written Statement at Page 43/1 to 43/3 opposing claim of workman. 2nd party submits that workman Mannu Singh T.No.143 billing clerk was working in Amlai colliery of SECL Sohagpur. Workman had made for billing of monthly salary during the month January 91 to January 92. Quarterly bonus payment of 17 persons that excess amount of Rs.27232.81 was made to the employees. That audit department during course of audit found such excess payment made to the employees on account of overbilling by Mannu Singh. That chargesheet No. 1483 dated 22-7-93 was issued. Workman submitted reply, reply was found not satisfactory. Shri S.P.Jaiswal was

appointed Enquiry Officer and A.N.Ram as management representative as per order dated 7-2-94. Enquiry Officer issued notice fixing the enquiry on various dates. Workman did not attend enquiry. On 13-4-94, enquiry was proceeded ex parte. That Enquiry Officer considering oral and documentary evidence submitted his report that charges alleged against workman are proved. After receiving showcause notice, workman was dismissed from service.

5. 2nd party further submits that workman failed to attend enquiry even after notices were repeatedly issued. Deliberately not availed opportunity for his defence. That chargesheet issued to workman on the finding of audit department. That mercy appeal was submitted by Satyadev Singh clerk was entertained on merit. No merit was found in appeal preferred by workman. Service record of workman was not unblemished. That billing clerk alone is responsible for overbilling. Even if any other person is responsible, it does not relieve workman from the charge of overbilling. That recovery of amount of excess payment has no nexus with the misconduct committed by workman. It is admitted that clerical mistake is possible but it cannot be habitual. When it is habitual, it becomes grave misconduct. The workman never bothered to attend enquiry. He submitted application for change of Enquiry Officer. Application did not merit consideration. 2nd party prays for rejection of claim.

6. Workman filed rejoinder at Page 8/1 to 8/3 reiterating contentions in statement of claim. That enquiry was conducted ex parte, he was not given opportunity for his defence. In Sohagpur area of SECL, no standing order is existing. No certified standing orders are got certified by the management. That principles of natural justice were violated while conducting enquiry, proper procedure were not followed. Principles of natural justice have been violated. Enquiry is not legal.

7. As per order dated 9-2-15, enquiry conducted against workman is found legal.

8. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	Only charge No.2,4 under clause 26.5, 26.22 are proved.
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

9. The term of reference pertains to legality of dismissal of workman. As per order dated 9-2-15, enquiry is found legal. Whether charges alleged against workman are proved or needs to be decided from evidence in Enquiry Proceedings in view of proviso to Section 11-A of ID Act. From evidence of management's witness, documents of enquiry are admitted in evidence at Exhibit M-1. The charge No.1 against workman pertains to theft, fraud in connection with employees business or property. Under clause 26.1, willful neglect of work, clause 26.5, any breach of Mines Act 1952 or other act or any rules, regulations or bilaws under clause 26.15. any willful or deliberate act which is subversive of Discipline or which may be detrimental to the interest of the company, Clause 26.22 of standing standing orders. Workman submitted reply to the chargesheet M-2. He denied charges against him.

10. Statement of management's witness Suresh Prasad Sharma before Enquiry Officer is on the point that as per oral directions audit of wagesheets was carried by him. In audit, certain errors in the wage sheets were found by him. Payment sheets pertain to Transport (II) for month of January 89 to January 92 excess payment of Rs. 27000-28000 was found. Excess payment of bonus was also noticed. The wage sheets were bearing signatures of its writer. In his cross-examination, management's witness says that any other wage sheets, some discrepancies were found worth about Rs.40 to 50. Management's witness Rameshwar Singh in his statement in Enquiry Proceedings says that wage sheets were audited by him as per oral directions. Some discrepancies were found in wage sheet of Transport (II). Excess payment of amount Rs.27000 to 28000 was made. Wage sheets were bearing signature of writer. Management's witness Dayaram Sharma says only about audit of wage sheet carried by him. He did not say anything. On questions asked by Enquiry Officer, said witness replied he says he had checked total amount before payment shown in the wage sheet. He had not checked the wagesheets. Management's witness T.Rammurthy before Enquiry Officer is on the point that on post audit of the transport II errors were found in wage sheets of Transport II. Excess amount payment to employees was recovered as per reports submitted by Accounts Officer. Similar evidence is given by Account Officer Shri S.K.Ghora that excess amount was made to the employees in transport II. Those wage sheets were prepared by deceased workman Mannu Singh. Statement of management's witness shows that excess amount was paid to the

employees. Deceased workman did not receive any amount as per wage sheets prepared by him. Therefore evidence is not sufficient to prove that workman had any kind of dishonest intention to receive wrongful gain. Therefore Charge No.1 under Clauwe 26.1, Charge No.4 under 26.22, charge No.3 under clause 26.15 cannot be established. The evidence is clear on the wage sheet prepared by workman, excess amount was paid to the employees. The act committed by workman is an act of negligence, it is also subversive of discipline and detrimental to the interest of the company. Thus from evidence discussed above, charge No.1 only under clause 26.1, 2 under 26.22 are proved. Accordingly I record my finding in Point No.1.

11. Point No.2- Workman died during pendency. His LR are brought on record. Though workman has contented that similar chargesheet was issued to Satyadev, Appellate Authority had allowed reinstatement. The appeal by workman was not properly considered. He was not allowed reinstatement similar to Satyadev Singh. The order passed in appeal in the matter of Satyadev Singh is not produced on record.

Shri A.K.Shashi for management relies on ratio held in case between Post Master General, Kolkata and others versus Tutu Das (Dutta) reported in 2007(5)SCC-317. Their Lordship dealing with improper grant of regularization to similarly situated person held the same does not create the entitlement to regularization on ground of equal treatment under Article 14. Equality is a positive concept and cannot be invoked where any illegality has been committed or where no legal right is established.

Reliance is also placed in case between Union of India and others versus A.Nagamalleshwar Rao reported in AIR-1998-SC-III. Their Lordship held the Tribunal cannot examine evidence produced before Enquiry Officer as it is appellate court.

12. Shri A.K.Shashi relies on ratio held in case between-

Sarva Uttar Pradesh Gramin Bank versus Manoj Kumar Sinha reported in 2010(3)SCC-556. The ratio held in the case pertains to breach of principles of natural justice in Enquiry Proceedings. Enquiry conducted against workman is found legal as per order dated 9-2-15. Order has received finality therefore ratio held in the case cannot be applied to present case at hand.

Learned counsel Shri Anuraj Singh Thakur submitted copy of judgment in Writ Petition 201-2016. Careful reading of the judgment clearly shows that enquiry held against workman was found vitiated. The charges were not proved. Instead of reinstatement, compensation was allowed in favour of the LRs. His Lordship modified the award of compensation to reinstatement with continuity of service with consequential benefits etc.

13. In present case, enquiry against workman is found legal. Charge No.1 & 4 are proved as per my finding in Point No.1. therefore the principles laid down in judgment in Writ Petition No. 201/16 cannot be beneficially applied to case at hand. Charge No.1 & 4 alleged against workman are proved from evidence in Enquiry Proceedings. Consequent to the wage sheets prepared by workman, excess amount of Rs. 25 to 27000 was paid to the employees therefore the proved charges against workman are of serious nature. Therefore punishment of dismissal imposed against workman doesnot justify interference. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the Sub Area Manager, Amlai Sub Area of SECL, Sohagpur Area in dismissing Shri Mannoo Singh, T.No.143, Clerk Grade IstAmalai colliery from company services w.e.f. 20-7-94 is proper and legal.
- (2) Workman/LRs are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1496.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 60/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/96/2013-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of NCL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/96/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/60/2014

General Secretary,
Koyna Shramik Sabha (HMS),
B-10, Amlohri Project,
Distt. Singrauli, MP

...Workman/Union

Versus

General Manager,
NCL, Amlohri Project,
Distt. Singrauli, MP

...Management

AWARD

Passed on this 27th day of April 2017

1. As per letter dated 23-7-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/96/2013-IR(CM-II). The dispute under reference relates to:

“Whether the non-payment of salary/ wages for the period from 21-3-99 to 25-3-99 and other dues pertaining to TA/DA including leave wages etc. for the year 1998 to 2003 to the workman Shri S.K.Saxena, Excavator Operator by the management of Northern Coalfield Ltd (NCL) Amlohri Project, Distt. Singrauli is legal and justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Despite of repeated notices, Ist party failed to appear and participate in reference. On 4-8-2016, workman is proceeded ex parte.

3. 2nd party management has filed Written Statement. 2nd party submits that the dispute is raised by Ist party is highly belated as same has been raised after 16 years. The reference is not tenable. That workman Shri S.K.Saxena was deployed as excavator operator. His services are governed by standing orders of NCWA and cadre scheme. Workman came to Nigahi project on transfer from Almohri project of NCL. That different kinds of leave i.e. CL, EL, SL are allowed as per the rules. CL cannot be granted from credit of leave of year. 2nd party further submits that workman cannot ask for wages for the period 23-3-99 to 25-3-99. 2nd party management denies that wages for above said period was not paid to him. Workman was not entitled to TA DA for appearing before CBI. On such grounds, 2nd party prays for rejection of claim.

4. Management filed affidavit of evidence of Shri Sunil Jha supporting whole contentions in statement of claim.

5. As workman has not appeared and filed statement of claim, the reference is answered in favour of management. Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1497.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 76/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/7/2006-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1497.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of WCL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/7/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/76/2006

General Secretary,
Samyukta Koyla Mazdoor Sangh (AITUC),
Central Office, Iklehra,
Pench Kanhan Area,
Chhindwara

...Workman/Union

Versus

General Manager,
Western Coalfields Ltd.,
Pench Area, PO Parasia,
Tehsil Parasia, Chhindwara

...Management

AWARD

Passed on this 11th day of April 2017

1. As per letter dated 20-11-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/7/2006-IR(CM-II) The dispute under reference relates to:

“Whether the action of the management of Western Coalfields Limited in dismissing Shri Sahilal w.e.f 22-11-2004 as a result of disciplinary proceedings for remaining on unauthorized absence is legal and justified? If not, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 6/ to 6/4. Case of Ist party workman is that he was initially employed at Newton Ganpati mine as clipman. He honestly discharged his duty. While performing duties as clipman, he suffered from illness on 8-4-03. He could not attend his duty from 8-4-03 to 23-4-03. He was declared fit from 24-4-03 by Doctor Sunil from Parasia. He was advised to take rest for 90 days. Again he was declared fit on 22-7-03 by Dr. S.R.Nag. workman again fell ill and received treatment from 23-7-03 to 5-10-03. He was declared fit by Dr. Sunil from 6-9-03. That he submitted application for medical leave in prescribed manner. Chargesheet was issued to him on 27-8-02 under Clause 26.30 of standing orders. Enquiry was conducted as per letter dated 12-11-02. Though he attended the office, enquiry was not conducted. He submitted application to allow him on duty. He was not allowed on duty. Management issued letter dated 0-1-04 informing that despite letters sent to him, he did not attend enquiry. Enquiry was proceeded ex parte. He was found guilty of charges against him. Chargesheet was also issued to him on 1-4-04 alleging absent from duty from 8-4-04 alleging misconduct under clause 26.30. in pursuance of chargesheet dated 27-8-02, his services were terminated from 23-11-04.

3. Ist party workman further reiterates that Disciplinary Authority inspite of considering medical certificate and explanation submitted by him held enquiry behind his back. He was subjected because of his Union activities. Ist party workman alleged malice against management. The chargesheet was fabricated. That he was not allowed to be represented by co-worker. That no standing order is existing as referred in the chargesheet. The order of dismissal is harsh. Punishment is excessive. The proper procedure was not followed in the enquiry. Punishment of dismissal is illegal. Workman prays for his reinstatement with full backwages.

4. 2nd party filed Written Statement opposing relief claimed by workman. 2nd party reiterates that workman was habitual absentee. He remained unauthorisely absent from duty. Workman donot show interest in service. The opportunity allowed by management was considered as weakness of the management. That service conditions of employees in coal industry are covered by NCWA & standing orders. The employee remaining on leave is required to

submit leave application in advance to the concerned authority. If employee fell sick, he is required to report to the Medical Officer who issues sick certificate. 2nd party further submits Ist party workman was issued chargesheet for unauthorized absence from 27-8-02. Workman remained absent without sanctioned leave. The attendance particulars of Ist party workman are shown in para-5 of the Written Statement. Attendance of workman in 2000 is 188 days, in 2001 is 164 days, in 2002 is 66 days. Ist party further submits that Bist was appointed as Enquiry Officer. Shri S.R.Bhandare as management's representative. Enquiry was conducted on various dates show in para-7 of the Written Statement. On 17-2-04, workman remained absent. Enquiry was proceeded ex parte. It is reiterated that Enquiry Officer submitted his report holding workman guilty of charges. Workman was given ample opportunity for his defence but he did not avail it. Enquiry was rightly conducted in absence of workman. 2nd party denies that workman submitted applications for resuming duty. It is discretion of management to allow or not to resume duty. Report of Enquiry Officer was served on workman. Enquiry was conducted on the chargesheet issued to him. 2nd chargesheet was not necessary. The workman remained absent since 13-5-02. It is denied that standing orders are not certified. 2nd party prays for rejection of claim.

5. As per order dated 4-2-5, enquiry conducted against workman is found legal.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iii) If so, to what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Point No.1,2- As per order dated 4-2-15, enquiry conducted against workman is found legal. Workman did not adduce evidence on preliminary issue as well as on other issues. Evidence of workman on other issues was closed on 7-2-16. Management also did not adduce evidence on other issues. In Exhibit W-1, Enquiry Officer held charge of unauthorized absence of workman from 23-8-02 is proved. Exhibit W-2 is chargesheet dated 1-4-04. Workman is shown absent from duty from 8-4-04. Said chargesheet is not relevant for deciding unauthorized absence of workman from 27-8-02. Exhibit W-3 is order of dismissal.

8. Management produced documents Exhibit M-1 application by workman for permission to resume duty. Order of dismissal of workman is also produced by management. As per document at Page 7/19, workman was informed that on his failure to appear in enquiry, enquiry would be conducted ex parte. At document Page 7/26 -27, statement of management's witness shows that in the year 2000, working days of workman were only 66 days. The workman was absent from duty. As per Enquiry Report at Page 7/28, workman was absent from duty from 27-8-02. Workman has not participated in reference proceeding. He has not adduced evidence either on preliminary issue or other issues. Considering the documents of enquiry and report submitted by Enquiry Officer, charge of unauthorized absence against workman is proved. Punishment of dismissal against workman does not call for interference. For above reasons, I record my finding in Point No.1 & 2 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management of Western Coalfields Limited in dismissing Shri Sahilal w.e.f. 22-11-2004 as a result of disciplinary proceedings for remaining on unauthorized absence is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1498.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 36/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/86/2010-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1498.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of WCL and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/86/2010-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/36/2011

President,
Lal Jhanda Coal Mines Mazdoor Union,
Eklehar, Distt. Chhindwara

...Workman/Union

Versus

Chief Manager,
WCL, Pench Area,
Parasia,
Distt. Chhindwara

...Management

AWARD

Passed on this 12th day of May, 2017

1. As per letter dated 11-5-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/86/2010-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Naheriya UG Mine, Pench Area of WCL in terminating the service of Shri Gajaraj, DPR w.e.f. 17-5-03 is legal and justified? To what relief, the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim on 6-1-12. Case of workman is after holding Departmental Enquiry, he was dismissed from service in violation of principles of natural justice. Enquiry was conducted partially. Ist party was working as DPR holding Token No. 31. His mother was suffering from cancer. Consequently he was absent from duty many times. He had given information oral and in writing about his absence of Enquiry Proceedings. He was also suffering from illness. Medical certificate about his illness was produced. Despite of medical certificate produced by him, he was dismissed. He had begged to be pardoned for his absence. He was not considered under scheme Nayee Roshni. More than 70 employees dismissed were reinstated. Workman was not reinstated under said scheme. Punishment of dismissal is imposed against him only for absence of 3 months. In month of February 2003, he was on duty for six days. In March 2003- 15 days total 21 days. The employees who were absent for period of 3 years were reinstated imposing punishment of withholding increments. On such ground workman prays for his reinstatement with consequential benefits.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that workman was working as departmental piece rated at Neharia underground mine of WCL, Pench Area, he had joined said mine on his transfer from Thesgora mine from 14-8-00. Workman was habitual absentee. He remained absent unauthorisely without giving intimation, permission or sanctioned leave. Working days of workman in year 2000 were 129, in 2001 – 117 days, in

2002-17 days. That chargesheet was issued to him on 9-7-01 for his unauthorized absence from 5-5-01. However no disciplinary action was taken against him with a view to provide him chance to improve. Workman did not show improvement. Again he remained absent without intimation or sanctioned leave from 15-6-02. Chargesheet was issued to workman on 7-12-02. Workman did not submit satisfactorily. Management decided to conduct enquiry. Mr. J.K.Gupta was appointed as Enquiry Officer, Shri A.K.Sinha as management representative. Enquiry was conducted on various dates. Workman submitted application to engage Mr.Lochan Prasad President of CITU as his co-worker. Lochan Prasad did not attend enquiry, enquiry was adjourned on ground of request of workman. Enquiry was fixed on 7-4-03. Defence Assistant of workman was not present. Enquiry was adjourned to 12-4-03. Evidence of management was recorded. The documents were produced by management. Workman also adduced evidence in his defence and produced medical certificate. Enquiry Officer submitted his findings holding workman guilty of charges. After issuing showcause notice dated 18-4-03, workman was terminated on 17-5-03. 2nd party reiterates that principles of natural justice were not violated while conducting enquiry. Workman participated in enquiry. For proved misconduct, punishment was imposed against workman. Workman has not given particulars of 70 workers re-employed by the management. Facility of treatment is provided by management in hospital run by management. On such ground, 2nd party prays for rejection of claim.

4. As per order dated 8-4-16, enquiry conducted against workman is found legal.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman are proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

6. The term of reference pertains to legality of termination of services of workman from 17-5-03. Enquiry conducted against workman is found legal. Chargesheet was issued to workman under clause 26.24 relating to habitual absence and unauthorized absence 26.30- remaining absent from duty without sanctioned leave more than 10 days. Statement of Shri S.K.Sinha was recorded before Enquiry Officer as management's witness. His statement is clear that workman was absent from 15-6-02 without sanctioned leave or permission. Workman was working in Neharia mine in the year 2000. He was on duty for 49 days, in 2001- 117 days, in 2002- 17 days. After chargesheet issued to workman, 1st party had attended duty six days in February 2003, 21 days in March 2003, workman was absent from duty without sanctioned leave or intimation to the management. Attested Form G for 2001,02,03 were produced which corroborates evidence of Shri G.P.Sinha, Management's witness. Statement of workman as recorded. In his statement, workman explained that in the year 2001, his mother was continuously ill. He was taking care of his mother. His mother was suffering from cancer. His mother died in the year 2001. Thereafter he was suffering from shock of death of his mother. Mentally he was upset and was not in position to attend his duty. Evidence of management's witness and statement of workman further shows that workman had not submitted application for leave. He not given intimation about his absence. Enquiry Officer has discussed evidence while recording his findings. In my considered view, charges alleged against workman under clause 26.30,46,24 are established. For above reasons, I record my finding in Point No.1 in Affirmative.

7. Point No.2- In view of my finding in Point No.1 charges under clause 26.30,24 are proved against workman. Workman was absent from duty from 15-6-02 to chargesheet issued to him on 7-12-02. The period of absence of workman is less than 5 months 22 days.

8. Workman had produced medical certificate issued by Assistant Surgeon Junnardeo at Exhibit W-4 of Enquiry Proceedings, 1st party workman had not produced certificate from hospital run by management of 2nd party. He had not given intimation about his illness to the management. Workman had not applied for leave. While imposing punishment, Competent Authority did not consider the facts that even after issuing chargesheet, workman had attended duty for 21 days during February March 2003. Said part of evidence clearly shows that workman was not dead wood. He was inclined to work in the mines. Learned counsel for 2nd party Shri A.K.Shashi submitted copies of award passed in R/56/07, 140/91. Each case deserves to be decided considering the evidence on record. Particularly when workman attended duty for 21 days in February, March 2001 after chargesheet was issued to him, his mother was suffering from cancer and died cannot be disbelieved. Those aspects were not considered while imposing punishment.

9. Shri A.K.Shashi, Advocate counsel for management relies on ratio held in case between

"Eveready Industries India Ltd Jabalpur and others versus Shri P.S.Parihar reported in 2003(3)MPHT 257. Their Lordship observed that applicant No.1 employee remained absent for long time. He committed various irregularities in handling the trade. He did not take interest in the work. There was reasonable cause for dispensing with his services.

Ratio held in the case cannot be applied to case at hand. Workman had explained that as he was taking care of his mother, he was unable to attend duty. He submitted medical certificate from dispensary. He not submitted certificate form the hospital run by management.

Shri A.K.Shashi also relied on ratio held in case between New India Assurance Co.Ltd versus Vipin Behari Lal Srivastava reported in 2008(3)SCC-446. Their Lordship dealing with unauthorised absence for 600 days held that proper mode for obtaining sick leave, Tribunal directing reinstatement with full backwages on ground workman suffering from TB was set aside. That mere submission of leave application was not sufficient.

In case between A.M.Eashwarachar and Executive Engineer (Electrical) reported in 1995-LLJ-1065, His Lordship dealing with habitual absence held no sympathy would be justified. However order of dismissal was modified to order of termination.

Considering evidence on record, date of birth of Ist party workman is shown 20-3-76 in proforma. Workman is young and willing to work, punishment of dismissal imposed against workman is harsh. The punishment of dismissal imposed against workman deserves to be modified to withholding two increments with cumulative effect and reinstatement of workman without backwages. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Naheriya UG Mine, Pench Area of WCL in terminating the service of Shri Gajaraj, DPR w.e.f. 17-5-03 is illegal.
- (2) Punishment of dismissal is modified to with holding two increments with cumulative effect. 2nd party is directed to reinstate workman but without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1499.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 160-ए/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/426/1999-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 160-A/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of FCI and their workmen, received by the Central Government on 09.06.2017.

[No. L-22012/426/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/160-A/2000

Shri Kartik Ram Sahoo,
S/o Shri Sudhuram Sahu,
Village Amasivni, G.S.I,
Mandhar, Raipur

...Workman

Versus

The District Manager,
Food Corporation of India,
District Office, Kutchery Chowk,
Raipur (MP)

...Management

AWARD

Passed on this 21st day of April, 2017

1. As per letter dated 7-3-2000 and corrigendum dated 31-8-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/426/99-IR(CM-II). The dispute under reference relates to:

“Whether Shri Kartik Ram Sahu claiming himself to be a Driver is a workman under Section 2(s) of the ID Act, 1947? If so, whether his termination by the management of Food Corporation of India w.e.f. 31-12-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to ¾. Case of workman is that he was appointed on post of driver on 20-6-96 for driving vehicle of 2nd party management. That he was satisfactorily performing his duties. Vide order dated 31-12-98, his services were terminated orally without assigning any reasons. Any chargesheet was not issued to him. DE was not conducted against him. That termination of his services is illegal and deserves to be set aside. Workman submits that he completed more than 240 days continuous service, he acquired status of permanent employee. His services could not be terminated without following statutory provisions. Management failed to comply principles of natural justice. He was not given opportunity before terminating his services. The act of terminating his service amounts to unfair labour practice and victimization.

3. Ist party workman further reiterates after his appointment on post of Driver, he continuously worked more than 240 days. Termination of his service without notice is illegal for violation of Section 25-F of ID Act. After termination of service, he is out of employment and presently not gainfully employed. His family is living in starving conditions. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party management submitted Written Statement at Page 7/1 to 7/10 opposing claim of workman. Preliminary objection is raised by 2nd party that Ist party workman was never employed by it. There was no employer employee relationship between parties. As Ist party was never employed by FCI, he is not workman under Section 2(s) of ID Act.. FCI is undertaking of Central Government. The dispute could not have been referred to the Tribunal. The reference deserves to be answered against workman. 2nd party further submits that Central Government is not appropriate Government and State Bank has authority to refer the matter for adjudication to State Labour Court. CGIT has no jurisdiction to entertain the cases. That FCI has various district offices in the country. In State of Chhattisgarh, FCI is having district offices at Raipur, Durg, Bilaspur. There was administrative unit of corporation for carrying its operation at Raipur. During year 1995 to 1999, there was practice prevailing in FCI and security of godowns by Pvt Security Agent. It is reiterated that security services was engaged for providing security. The contract was given for lumpsum amount of Rs.14850 with condition that the security agency will have to work in regular pay scale. In Class III of the terms, it was made clear that security personnel will be the employees of M/s. Pandey Security Services. It is reiterated that workman and two other Security persons were appointed by Pandey Security Services company as security guard and not as a driver. The payments were made to said security persons by M/s. Pandey Security Services. That workman was not employed by FCI as driver in vacant post from 20-6-96. The contentions of workman are totally false. There was no question of terminating services of workman from 31-12-98. It is reiterated that as workman was not appointed by FCI, he is not covered as workman under Section 2(s) of ID Act. Workman was engaged by M/s Pandey Security Services as security Guard. He was not employee appointed by FCI. There was no question of issuing chargesheet or holding enquiry. Management denied that workman had worked continuously more than 240 days in FCI. Rather explaining that workman was engaged by M/s Pandey Security Services. On such ground, 2nd party prays that claim of workman deserves to be rejected.

5. Ist party workman submitted rejoinder reiterating contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:

(i) Whether Shri Kartik Ram Sahu claiming himself to be a Driver is a workman under Section 2(s) of the ID Act, 1947?	In Affirmative
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(ii) Whether his termination by the management of Food Corporation of India w.e.f. 31-12-98 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

7. As per pleadings between parties, whether Ist party workman is covered under Section 2(s) of ID Act is in dispute. Ist party workman claims he was appointed on post of driver. 2nd party in his pleading claim that workman was engaged by M/S Pandey Security Services as security guard. As workman as not appointed by FCI, he is not covered under Section 2(s) of ID Act.

8. Workman filed affidavit of his evidence. In his affidavit of evidence, he has stated that he was appointed as Driver in FCI on 20-6-96. He has produced document W-2 about his appointment as driver on daily wages from 20-6-96 driving licence is produced at Exhibit W-1.

9. Management's witness Shri B.P.Singh in his affidavit of evidence has stated that FCI engaged M/s Pandey Security Services company. Said security service provided 15 security person to work in 3 regular shifts. However any document w.r.t. engagement of Pandey Security Services are not produced. Evidence of management's witness on the point is not supported by documents.

Section 2(s) of ID Act defines workman "means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute."

Work of driver is certainly covered under manual work or skilled work therefore Ist party workman is covered under Section 2(s) of ID Act. For above reasons, I record my finding in Point No.1 in Affirmative.

10. Point No.2 The term of reference pertains to legality of termination of services of workman. In his affidavit, workman has stated on 20-6-96, he was working as Driver in FCI after his appointment by District Manager, he was called for interview on 19-6-96, after verification of documents, he was appointed. He completed more than 240 days continuous service preceding 12 months of his termination on 31-12-98. Documents Exhibit W-1 to 6 are admitted from evidence of Ist party workman. In his cross examination, workman says appointment letter was given to him. It was got back from him by the management. He is not acquainted with Pandey security services. He did not work with pandey security services during the period 20-6-96 to 30-7-97. He denied that he didnot work in FCI. Workman said he worked as security guard. After reexamination of workman he was cross examined. In his cross examination, workman says Exhibit W-1 was supplied to him on his demand by Shri R.G.Soni. that on document W-2, there is no seal of FCI. He submitted Exhibit W-4 in FCI office. Petrol vouchers doesnot bear seal of FCI. That seal of FCI is appearing at Page 24-25 on document W-5 soni security services, security service guard is written. On Exhibit W-6, seal of Assistant Manager is endorsed.

11. Management's witness in his affidavit of evidence though reiterate3d that workman was engaged by M/S Pandey security services, any document of contract between FCI & M/s Pandey security services are not produced. If evidence of workman and management's witness is carefully appreciated, evidence of workman is supported by document Exhibit W-1. He was continuously working from 20-6-96 as Driver. Exhibit W-1 licence is produced, document W-3 appears self written. The vouchers of purchasing petrol Exhibit W-4/1 to 55 and Exhibit W-5 corroborates evidence of workman and therefore evidence of workman deserves to be accepted. Document Exhibit W-5 pertaining to attendance of workman however shows workman is shown as security guard. Thus documents produced by workman are not showing whether he was working as security guard or as Driver. If Exhibit W-5 is accepted, workman is shown working as Security Guard whereas in document Exhibit W-1, 2 is shown working as Driver. However from both documents, it is clear that workman was working in FCI. Management has not produced documents about contract between FCI and Pandey security services therefore the evidence of management's witness that workman as employee of contractor M/s. Pandey security services cannot be accepted. Documentary evidence shows that workman was working till June 97. Application for production of documents was submitted by Ist party. Management did not produce documents claimed by workman stating that documents were destroyed after prescribed time limit of 5-10 years. The evidence of workman corroborated by Exhibit W-5 establish that he was continuously working more than 240 days preceding 12 months of his termination on 31-12-98.

12. Management's witness in his cross says that he was appointed in 2001. Workman did not work under his control. He not brought any record at the time of recording his evidence. That he had seen documents of security

service, contract etc. Management's witness claims ignorance that workman was driving vehicle No. MP-04-J-7328. Evidence of management's witness is silent about paying retrenchment compensation or one months pay in lieu of notice. Evidence on record shows workman worked more than 240 days continuous service preceding 12 months of his termination. Services of workman were terminated without notice, retrenchment compensation was not paid to him. Termination of services of workman is illegal. For above reasons, I record my finding in Point No.1 in Negative.

13. Point No.3- In view of my finding in Point No.1 termination of services of workman is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. 2nd party has submitted copy of award in R/242/99 & 150/02. Each case required to be decided considering evidence on record. In present case, workman worked from 20-6-96 as driver till 31-12-98. Considering short period of his working, as daily wage driver, no evidence is on record about sanctioned post lying vacant, compensation Rs.75000/- would be appropriate in meeting ends of justice. Accordingly I record my finding in Point No.3.

14. In the result, award is passed as under:-

- (1) The action of the management in terminating services of Shri Kartik Ram Sahu is illegal.
- (2) 2nd party is directed to pay compensation Rs.75,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जून, 2017

का.आ. 1500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनआईटीटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 10/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.06.2017 को प्राप्त हुआ था।

[सं. एल-42012/155/2005-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th June, 2017

S.O. 1500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of NITT and their workmen, received by the Central Government on 09.06.2017.

[No. L-42012/155/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/10/2008

Shri Vivek Saxena,
S/o Shri V.P.Saxena,
H.No.B.Q.6,
National Institute of Technical Teachers
Training and Research,
Shamla Hills, Bhopal

...Workman

Versus

The Principal,
National Institute of Technical Teachers
Training and Research
Shamla Hills,
Bhopal

...Management

AWARD

Passed on this 12th day of May, 2017

1. As per letter dated 21-1-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/155/2005-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of National Institute of Technical Teachers Training & Research, Bhopal in terminating the services of Shri Vivek Saxena S/o Shri V.P.Saxena w.e.f. 30-6-01 is legal and justified? If not, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/4. Workman claims that he was appointed on vacant post of Video Computer Programmer on 7-9-92 following the procedure. His services were terminated on 30-6-01. He was continuously working from date of his appointment till termination of his services. Department of 2nd party is industry under ID Act. That he worked continuously more than 9 years before termination of his services. No enquiry was conducted or showcause notice served on him before termination of his services. Principles of last come first go was not followed. Junior colleagues were continued in service. Termination of his service is illegal. After failure report submitted by ALC, Government not referred the dispute. Only after direction in Writ Petition No. 9499/07, dispute has been referred. It is reiterated that management is showing him as Project employee by clever device and colourable exercise of powers. On such ground, workman prays for his reinstatement.

3. 2nd party management filed Written Statement opposing claim of workman. 2nd party submits that for improvement in technical education, the technical teachers Training Institute was established at 4 places in the country including Bhopal. 2nd party is society registered under MP Society Registration Act, 1973. 2nd party covers area of Madhya Pradesh, Maharashtra, Gujarat, Goa and Chhattisgarh. Besides teachers training, this institute takes care of the technical needs of the polytechnics and engineering colleges of the states. It is autonomous organization under Ministry of Human Resources. That it is denied that workman was appointed on clear post of computer programmer. Such post is not existing. 2nd party denies that services of workman are terminated on 30-6-07. That Ist party was appointed for the period 1-1-01 to 30-6-01. His services were discontinued on 7-6-01. Workman was paid as per contract since the terms of appointment were very clear, there was no question of giving opportunity of hearing. 2nd party denies that it is covered as industry under ID Act reiterating that it is registered society. There was no need to conduct any enquiry. Services of Ist party were engaged for projects running in the institute. His services were discontinued after the project was completed. It was not necessary to pay compensation as Ist party was engaged for definite period. After completion of project, his services were discontinued. It is further submitted by 2nd party that the workman was not unemployed. He was working in oriental institute of science and technology, Bhopal as Lab Assistant during 6-8-01 to 7-2-03. Laxmi Narayan College of Technolongy, Bhopal as programmer permanent capacity. Workman was not its regular programmer employee. Workman was engaged as per terms of agreement dated 22-1-01. On such ground, 2nd party prays for rejection of claim.

4. Ist party filed rejoinder reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of National Institute of Technical Teachers Training & Research, Bhopal in terminating the services of Shri Vivek Saxena S/o Shri V.P.Saxena w.e.f. 30-6-01 is legal and proper?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

6. The terms of reference pertains to legality of termination of services of workman. Though 2nd party has contented in Written Statement it is not covered as Industry. 2nd party has not adduced evidence what kind of research activities are undertaken by 2nd party. There is no pleading in Written Statement that 2nd party is engaged in discharging of sovereign functions. As per judgment in Bangalore Water Supply cases, educational institutions welfare activities are not included from industry under Section 2(j) of ID Act. It is suffice to hold that 2nd party is covered as industry.

7. Ist party filed affidavit of evidence. He has stated that on 7-9-92, he was appointed as video computer programme. He was continuously working till 30-6-01. His services were terminated by 2nd party. That 350 employees were working in establishment of 2nd party. At the time of termination, he was not served with notice, he was not paid retrenchment compensation. He holds qualification post graduate diploma in management. From his evidence, document Exhibit W-1 is admitted in evidence. In his cross-examination, workman says about his qualification and he was carrying work of website maintenance, mate working, computer teaching short term long term courses. Appointment letter was not given to him. He was paid salary on contingency basis. He completed more than 240 days continuous working. Document Exhibit W-1 is certificate about his working from 7-9-92 to 7-6-01. From Exhibit W-1, it is established that workman was continuously working more than 240 days preceding 12 months of his termination. Workman was not paid retrenchment compensation. Termination notice was not served on him. It is clear that his services are illegally terminated in violation of Section 25-F-a,b, of ID Act. Management has not adduced evidence to substantiate its contentions in Written Statement. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- Ist party workman was illegally terminated on 30-6-01. Dispute is raised on 21-1-08. Ist party in his cross examination, says that presently he is working wherever work is available. His wife is working as teacher in Private school. Workman has not disclosed his income from his working. Considering the evidence that workman is working wherever work is available, though workman deserves reinstatement, 30 % backwages from date of order of reference deserves to be allowed. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management of National Institute of Technical Teachers Training & Research, Bhopal in terminating the services of Shri Vivek Saxena S/o Shri V.P.Saxena w.e.f. 30-6-01 is illegal.
- (2) 2nd party is directed to reinstate Ist party workman with continuity of service with 30 % backwages from date of reference i.e. 21-1-08.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1501.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 78/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/151/2013-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of MCL and their workmen, received by the Central Government on 15.06.2017.

[No. L-22012/151/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 78/2013Date of Passing Order – 17th May, 2017**Between:**

The Chairman-cum-Managing Director,
Mahanadi Coal Fields, Jagruti Vihar, Burla,
Sambalpur, Orissa

...1st Party-Management**(And)**

The General Secretary,
Talcher Koila Khani Mazdoor Sangh,
At. Jamde Bhawan, Po. South Balandia,
Dist. Angul, Orissa

...2nd Party-Union**Appearances :**

Shri Biranchi Das, ... For the 1st Party- Management
Sr. Manager (Personnel/IR)

None ... For the 2nd Party-Union.

ORDER

The award arises out of a reference sent by the Government of India, Ministry of Labour vide letter No. L-22012/151/2013-IR (CM-II), dated 12.11.2013 in exercising its authority under sub-section 2A of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”) out of a dispute between the Management of Mahanadi Coal Fields and their workman and the schedule of reference is as follows:-

Whether the action of the claim of General Secretary, Talcher Koila Khani Mazdoor Sangh in claiming one day salary on 7.9.2010 for being present in the respective project area of Lingaraj, Bhubaneswari, Ananta, Hingula OCP, Jagannath, Bharatpur, Balaram and Talcher, Nandira Colliery with central work shop of Talcher Coal Fields, if found to be present on that day mentioned in the Register ‘D’ & ‘E’ of Mines Act is legal and or justified? If not, to what relief the Union is entitled to?”

2. The 2nd party-Union filed its statement of claim taking a stand that on 7.9.2010 a strike was called by the local villagers along with political leaders on an issue of welfare of peripheral villages of Talcher Coal Fields at Talcher and the local supporters and activists of the strike rushed into all mines and forcibly stopped operation of the mining activities and blocked the ways to all mines as a result of which the workers could not either attend their duties or they were forced to leave their place of work. Though a prior notice was given by the activists of such strike, the Management could not provide protection to workers so as to enable them to join their duties. It is the further contention of the Union that the party in power was supporting the strike for which no serious steps were taken to extend sufficient protection to the workers. Though workers were present near the site of mining activities, they could not give their attendance in their working place and there was no fault on their part to deny them wage for the day on account of their absence from their duties. As such a prayer has been made by the Union for giving direction to the Management to release one day salary of the workmen since salary of a day was deducted from their monthly wages for their failure to attend their duties on 7.9.2010.

3. The above statement of claim is resisted by the Management on a contention that the alleged strike was called by most of the Central Trade Unions namely, INTUC, HMS, AITUC, and CITU and the workmen being members of such Trade Unions remained absent from their duties in support of the strike held on 7.9.2010. As the workmen failed to attend their duties and did not work for the day, they were not entitled to receive their wage for that day on the principle of “no work no pay”. It is its further stand that one day salary/wage was not deducted from the monthly salary/wage of all workmen working under the employment of the Management. The workmen/persons who reported for duty were marked “present” in their attendance register in B-Form and they were paid wages for that day. Those employees who were absent themselves from the work or left the work place immediately after marking their attendance in support of the call for a strike, they were not given wage for the day.

4. Taking the pleadings of the parties into consideration the following issues were settled for adjudication of the dispute.

ISSUES

1. Whether the reference is maintainable?
2. Whether the claim of General Secretary Talcher Koila Khani Mazdoor Sangh in claiming one day salary on 7.9.2010 for being present in the respective project area of Lingaraj, Bhubaneswari, Ananta, Hingula OCP, Jagannath, Bharatpur, Balaram and Talcher, Nandira Colliery with central work shop of Talcher

Coal Fields, if found to be present on that day mentioned in the Register 'D' & 'E' of Mines Act is legal and or justified?

3. If not, to what relief the workman is entitled?

5. When the matter was pending for recording the evidence of the 2nd party-Union, it failed to take any steps to advance their evidence as well as any submission in support of their stand taken in the statement of claim. Hence the evidence of the 2nd Party-Union was treated as closed where-after the Management adduced oral evidence to deny the relief claimed by the 2nd Party-Union.

6. The affidavit evidence submitted by the witness of the Management under Order 18 Rule 4 C.P.C. is the repetition and vindication of the stand taken by the Management in its written statement. The witness, who is the Personnel Manager of the Management, has categorically stated in his evidence that on 7.9.2010 a strike was called by Central Trade Unions like INTUC, HMS, AITUC, and CITU and in response to such call the workmen either did not attend their duties or they who initially gave their attendance, left their working place in support of the call and they did not discharge their duties. As a matter of principle of "no work no pay", the workmen, who failed to attend or perform their duties, were denied with one day wage. According to him the workmen/persons, who discharged their duties, were given wage for that day. As it emerges from the pleadings and evidence of the parties that salary/wage of a day was deducted from the monthly wages/salary of the workmen on account of their remaining absent from their duties on 7.9.2010. Though a specific stand has been taken by the 2nd party-Union that the workmen were not in default and it was the Management who failed to provide protection to the workmen so as to enable them to attend their duties, no evidence in this regard has been adduced. When it is emerging from the uncontested testimony of M.W.-1 that the workmen, who attended their duties, were given their wages for the said day, it is hard to believe the stand taken by the 2nd party-Union without support of any evidence in this regard. There is no serious dispute to the principle of "no work no pay". The workmen having been failed to perform their duties on the alleged date of strike cannot be entitled to receive their wages for the day on which the strike was held. The workmen remained absent from their duties or they left their working place without performing any duties in support of the call for the strike. Therefore, the claim of the 2nd party-Union for one day salary/wage on 7.9.2010 for being found present as mentioned in the Register 'D' & 'E' without any performance towards discharge of their duties is not justified and legal.

7. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1502.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 31/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/85/2006-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1502.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of MCL and their workmen, received by the Central Government on 15.06.2017.

[No. L-22012/85/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 31/2006Date of Passing Award – 27th January, 2017**Between:**

The General Manager,
 Orient Area, Mahanadi Coalfields Limited,
 At./Po. Brajarajnagar, Dist. Jharsuguda, Orissa.
 Jharsuguda – 768 216

...1st Party-Management**(And)**

The General Secretary,
 Brajarajnagar Coal Mines Workers Union,
 Po. Orient Colliery, Via. Brajarajnagar,
 Jharsuguda

...2nd Party-Union**Appearances:**

Shri Debrup Pradhan, Legal Inspector	...	For the 1 st Party-Management
Shri Debendra Mohanta, Vice President	...	For the 2 nd Party-Workman

AWARD

The Government of India in the Ministry of labour in exercising of its powers conferred under section 2A of Section 10 of the I.D. Act (hereinafter referred to as “the Act”) has referred the dispute to this Tribunal vide letter No. L-22012/85/2006 – IR(CM-II), dated 01.11.2006 for its adjudication with following schedule:-

“Whether the action of the Management of Orient Area, Mahanadi Coal Fields Limited in terminating the services of Shri Dhanurjaya Biswal w.e.f. 8.6.2004 is legal and justified? If not, to what relief is the workman entitled?”

2. Facts giving rise to the reference, in short, may be stated as follows:-

The disputant workman Shri Dhanurjaya Biswal was working as a Badali Loader in the mining field of the 1st Party-Management. A departmental proceeding was initiated against him for a charge of his unauthorized absence for the period from 06.05.1996 to 06.04.2004. Being held guilty in the said proceeding he was dismissed from service with effect from 8.6.2004. The workman preferred an appeal against such order of dismissal to his higher authority. When the same was rejected, he raised a dispute before the Assistant Labour Commissioner (Central), Bhubaneswar resulting in the present reference.

3. The case of the disputant workman is that the departmental enquiry was not conducted in conformity to the principles of natural justice in as much as he was given major punishment without a second show cause notice and supply of the copy of the enquiry report. It is his further stand that despite his prior intimation and application for leave on the ground of his medical treatment and furnishing of medical certificate in support of his prolonged illness, his superior authority initiated a departmental proceeding vindictively. Though, he had filed necessary medical certificates before the enquiry officer to justify his absence from duty, the enquiry officer did not take those medical certificates into consideration while holding him guilty for such unauthorized absence. Such enquiry report being perverse and the same having not been supplied to him before his dismissal is a violation of principles of natural justice. Hence the departmental proceeding conducted against him is to be vitiated and he should be reinstated with back wages and other service benefits.

4. The Management has challenged the contention of the disputant workman taking a stand that a due charge-sheet was issued to the disputant workman while initiating a departmental proceeding. He was furnished with all documents and he was given due opportunities in the departmental proceeding to defend himself. The workman also participated in the proceeding actively being represented through a co-worker. The departmental enquiry was conducted in a fair and proper manner with conformity to the principles of natural justice. He was furnished with an enquiry report and asked to submit his explanation before his dismissal. The enquiry officer has taken into consideration the medical certificates produced by the workman while holding the workman guilty of misconduct for his unauthorized absence. The order of dismissal of the workman having been preceded by a fair and proper departmental enquiry is not warranted any interference and as such, the reference should be answered negatively against the workman.

5. Keeping in view the pleadings and contentions raised by the parties in the statement of claim and written statement filed thereon, the following issues have been settled for proper and effective adjudication of the dispute.

ISSUES

1. Whether the reference is maintainable?
2. Whether the domestic enquiry conducted by the Management was fair and proper?
3. Whether the action of the Management of Orient Area, M.C.L. in terminating the service of workman w.e.f. 8.6.2004 was just and proper?
4. If not, what relief is the disputant entitled to?

6. None of the parties having failed to make any prayer for adjudication of the issue of fairness of the departmental proceeding as a preliminary one, all the issues are heard and taken into consideration simultaneously. In order to substantiate its case the disputant workman has examined himself and filed all the documents regarding his treatment marked Ext.-1 to Ext.-1/29. On the other hand the Enquiry Officer Shri Debendra Kumar Thakur has been examined by the Management to prove the fairness of the departmental proceeding initiated against the workman preceding to his dismissal and relied upon the documents like copy of the order of appointment of Enquiry Officer, copy of the charge-sheet and original copy of the enquiry report marked Ext.-A to Ext.-C.

FINDINGS

7. As it appears from the pleadings and evidence of the parties there is no serious dispute regarding absence of the disputant workman from his duty for the period from 06.05.1996 to 06.04.2004 and initiation of a departmental enquiry against him wherein M.W.-1 was appointed as Enquiry Officer after issue of charge-sheet to the disputant workman vide Ext.- 2. In the charge-sheet he was alleged to have been found absent from his service unauthorisedly without intimation for the period from 06.05.1996 to 06.04.2004. It is also emerging from the evidence of the parties and the copies of the enquiry proceeding that the disputant workman participated in the departmental proceeding and he was defended by a co-worker in the said proceeding. There is nothing specific in the oral testimony of the disputant workman to establish that he was not supplied with any particular document or list of witnesses to be examined in the departmental proceeding. It is his specific statement that the departmental enquiry was not fair and proper since medical certificates filed by him in the proceeding were not taken into consideration by the enquiry officer while giving his finding on the misconduct alleged to have been committed by him and the copy of such report was not furnished to him before infliction of major punishment like dismissal. On the other hand the enquiry officer, who has been examined as M.W.-1, has categorically stated in his evidence that he asked the disputant workman to file prescriptions and other related documents in support of medical certificates and as he failed to file any discharge certificate or prescription he doubted the authenticity of the medical certificate. He has also categorically stated that he has mentioned in the enquiry report as to why the medical certificate produced by the workman was not taken into consideration. From the above evidence of the parties it is crystal clear that the disputant workman was given opportunities to defend himself in the departmental proceeding. He does not seem to have any grievance in the procedure or method in which the departmental enquiry was being held except to his contention that he was held unauthorisedly absent from his duty without consideration of his medical certificate.

8. Law is well settled that this Tribunal cannot re-appreciate the evidence and materials laid before the Enquiry Officer as an Appellate Authority as to draw its own conclusion to vitiate the departmental proceeding unless it is apparent on the face of the enquiry proceeding that the findings of the enquiring officer is perverse in the context of evidence and materials laid before the enquiry officer. The Tribunal has only got to consider whether the view taken is a possible view on the evidence laid in the enquiry proceeding. There cannot, however, be any doubt whatsoever that principle of natural justice are required to be complied with in a domestic enquiry. The said principle cannot be stretched too far nor can be applied in a vacuum. It is further trite that the standard of proof required in a domestic enquiry is absolutely different than the standard of proof required in a criminal trial. In view of the above principle set out by the Hon'ble Apex Court, the findings in the enquiry report cannot be reversed by this Tribunal merely on account of filing of a medical certificate towards illness of the workman for the period of his unauthorised absence. On the other hand, close scrutiny of the enquiry proceeding record and documents therein it is seen that reason has been assigned as to why such medical certificate was not believed. The disputant workman was stated to have remained unauthorised absence from 6.5.1996 to 6.4.2004 i.e. about eight years continuously. Had he been suffering from any prolonging disease and under treatment in any hospital, the disputant workman could have produced supporting medical papers to substantiate its contention. Having failed to do so, the enquiring officer had rightly held such absence as unauthorised one.

9. Coming to the other contention that the workman was prejudiced due to want of second show cause notice in the proceeding it is seen that no material is available on behalf of the Management to establish that the disputant workman was furnished with a copy of the enquiry report and he was given any opportunity to give his explanation on such findings of the enquiry officer before his dismissal. But, in terms of conclusions drawn by the Hon'ble Apex Court in a catena of decisions including U.P. State Textile Corporation Limited –Versus- P.C. Chaturvedi and others, reported in

2005 Supreme Court Cases (L & S) 1108, even in an eventuality of the report of the enquiry officer being not furnished to a delinquent employee, it has been held that the same would not automatically vitiate the departmental proceeding or result in quashing or setting aside the order of the punishment authority unless it is shown that non-supply of the report had prejudicially affected him. The factual situation in the case having been examined elaborately does not disclose that any prejudice has been caused to the workman. A bounden duty is cast upon the workman to establish as to how he was prejudiced in the departmental proceeding for not being supplied with a copy of the report. The principle requires that the Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished to the workman. The workman has failed to show as to how the furnishing of the report would have made a difference to the result in the case or in the departmental proceeding. The pleadings and evidence of the workman on record are totally silent as regards to the prejudice that has been caused to him on account of the enquiry report having not been supplied.

10. Even as regard to the quantum of punishment inflicted to the workman I am of the concerned view that there would be no scope for interference. The Article of Charge was precise in nature and having been duly proved during the course of the enquiry and the petitioner having been found remained unauthorized absence for a pretty long period of fourteen years without any prior intimation and proper explanation was rightly punished with an order of dismissal. Further it is well settled that the industrial Court has a limited role to play in regard to the quantum of punishment unless there exists sufficient reasons for interference. Interference is warranted only where penalty is imposed appears to be shockingly disproportionate to the nature of misconduct. In the case at hand the workman being found unauthorized absence from his service for a period of fourteen years continuously cannot expect to be punished lightly.

11. For the reasons recorded above, it can be safely held that the departmental enquiry was conducted in a fair and proper manner and there was no illegality or irregularity, in any form, in the action of the Management in dismissing the disputant workman with effect from 08.06.2004 in view of the findings arrived in the departmental proceeding.

12. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1503.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंडलको के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 10/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/60/2015-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1503.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of Hindalco and their workmen, received by the Central Government on 15.06.2017.

[No. L-22012/60/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 10/2016

No. L-22012/60/2015-IR(CM-II), dated 22.01.2016

Date of Passing Order – 23rd December 2016**Between :**

The M.D., Hindalco Industries Limited,
Century Bhawan, 3rd Floor, Dr. Annie Besant Road,
Worli, Mumbai – 430 030

...1st Party-Management

(And)

Shri Hema Chandra Pal,
LML Staff representative,
Talabira-1, Coal Mine, Talabira,
Dist. Sambalpur, Odisha,
Odisha – 768 001

...2nd Party-Workman

Appearances :

None	...	For the 1 st Party-Management
None	...	For the 2 nd Party-Workman

ORDER

Case taken up. Parties are absent. The 2nd Party-workman has not filed any statement of claim despite sending notices through regd. as well as ordinary post. In order to give a last opportunity to the 2nd party-workman regd. notice was issued on 18.08.2016 fixing 21.09.2016 for appearance and for filing of statement of claim, but neither the 2nd party-Union caused appearance nor has filed any statement of claim. Thereafter the 2nd party-workman was given two more chances for appearance for filing of statement in the interest of justice, but he did not appear and file any statement of claim. As such it seems that the 2nd party-workman is not interested in prosecuting his case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer